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MANUAL
FOR
COURTS-MARTIAL

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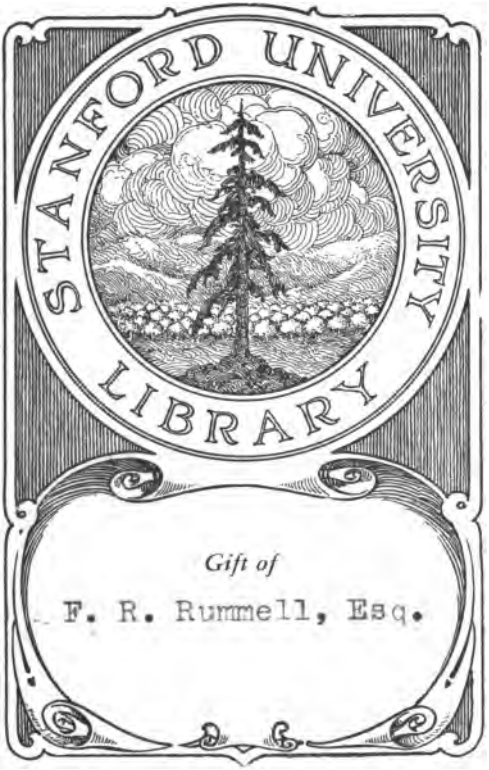

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MANUAL

FOR

COURTS-MARTIAL.

Prepared under the supervision of the
Judge-Advocate-General

BY

First Lieut. ARTHUR MURRAY, First Artillery.

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ABBREVIATIONS.

A. R.—United States Army Regulations of 1895.
A. W.—Articles of War.
R. S.—Revised Statutes.
J. A. G.—Judge-Advocate General.

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WAR DEPARTMENT,
Washington, October 2, 1895.

The Manual for Courts-Martial, prepared by direction of the Secretary of War for use in the Army of the United States, is approved and will be published for the information and guidance of all concerned.

DANIEL S. LAMONT,
Secretary of War.

A MANUAL FOR COURTS-MARTIAL.

INTRODUCTION.

MILITARY JURISDICTION.

Sec. I. MILITARY JURISDICTION is of four kinds:

1. **Military Law**; which is the legal system that regulates the government of the military establishment. It is a branch of the municipal law, and in the United States derives its existence from special constitutional grants of power.

2. **The Law of Hostile Occupation** (Military Government); that is, military power exercised by a belligerent by virtue of his occupation of an enemy's territory, over such territory and its inhabitants. This belongs to the Law of War and therefore to the Law of Nations.

3. **Martial Law at Home** (or, as a domestic fact); by which is meant, military power exercised in time of war, insurrection, or rebellion, in parts of the country retaining their allegiance, and over persons and things not ordinarily subject to it.

4. **Martial Law applied to the Army**; that is, military power extended in time of war, insurrection, or rebellion over persons in the military service, as to obligations arising out of such emergency and not falling within the domain of military law, nor otherwise regulated by law.

The last two divisions are applications of the doctrine of Necessity to a condition of war. They spring from the right of national self-preservation.[1]

Sec. II. THE SOURCE OF MILITARY JURISDICTION is the Constitution; the *specific provisions* relating to it being

[1] J. A. G.

found in the powers granted to Congress, in the authority vested in the President, and in a provision of the Vth Amendment.

2. **Military Law** is derived from both *Written* and *Unwritten Sources*.

The *Written Sources* are, the Articles of War, adopted as a part of the Revised Statutes of the United States in 1874 and since amended in some particulars; other statutory enactments relating to the military service; the Army Regulations; and General and Special Orders, and decisions promulgated by the War Department and by department, post, and other commanders.

The *Unwritten Source* is the "custom of war," consisting of the customs of the service both in peace and in war.

Sec. III. MILITARY TRIBUNALS are of three kinds, viz:

1. **Courts-Martial** (including summary courts), for the trial of offenders against military law.

2. **Courts of Inquiry**, for examining transactions of, or accusations or imputations against, officers or soldiers.

3. **Military Commissions**, for the trial of offenders against the laws of war and under martial law founded in necessity.

ARREST AND CONFINEMENT BEFORE TRIAL.[1]

Sec. I. ARREST OF OFFICERS. "Officers charged with crime shall be arrested and confined in their barracks, quarters, or tents, and deprived of their swords by the commanding officer."[2]

2. "Commanding officers only have power to place officers in arrest, except as provided in the 24th Article of War. An arrest may be ordered by the commanding officer, in person or through his staff officer, orally or in writing."[3]

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[1] Omission of arrest does not affect the jurisdiction of a court.

[2] 65th A. W.

[3] Par. 897, A. R.

3. "An officer arrested will repair at once to his tent or quarters, and there remain until more extended limits have been granted by the commanding officer, on written application. Close confinement will not be enforced except in cases of a serious nature."[1]

4. "An officer in arrest will not wear a sword nor visit officially his commanding or other superior officer, unless directed to do so. His applications and requests of every nature will be made in writing."[2]

5. "Officers will not be placed in arrest for light offenses. For these the censure of the commanding officer will generally answer the purpose of discipline. Whenever a commanding officer places an officer in arrest and releases him without preferring charges, he will make a written report of his action to the department commander, stating the cause. The department commander, if he thinks the occasion requires, will call on the officer arrested for any explanation he may desire to make, and take such other action as he may think necessary, forwarding the papers to the Adjutant-General of the Army for file with the officer's record, or for further action."[3]

6. "A medical officer, charged with the commission of an offense, need not be placed in arrest until the court-martial for his trial convenes if the service would be inconvenienced thereby, unless the charge is of a flagrant character."[4]

7. "When an officer is put in arrest for the purpose of trial, except at remote military posts or stations, the officer by whose order he is arrested shall see that a copy of the charges on which he is to be tried is served upon him within eight days after his arrest, and that he is brought to trial within ten days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said ten days. If a copy of the charges be not served, or the arrested officer be not brought to trial,

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[1] Par. 898 A. R.
[2] Ib. 901.
[3] Ib. 899.
[4] Ib. 900.

as herein required, the arrest shall cease. But officers released from arrest, under the provisions of this article, may be tried, whenever the exigencies of the service shall permit, within twelve months after such release from arrest."[1]

Sec. II. ARREST AND CONFINEMENT OF SOLDIERS.

1. Enlisted men in arrest in barracks or quarters will be designated as "in arrest;" those confined in the guardhouse awaiting trial or result of trial as "in confinement."[2]

2. Noncommissioned officers against whom charges may be preferred for trial will be placed in arrest in their barracks or quarters. They will not be confined in the guardhouse in company with privates, except in aggravated cases or when escape is feared.[3]

3. Noncommissioned officers *in arrest* will not be required to perform any duty in which they may be called upon to exercise command. Noncommissioned officers *in confinement* will not be sent out to work with prisoners under sentence.

4. Privates "against whom charges may be preferred for trial by summary court will not be confined in the guardhouse, but will be placed in arrest in quarters, before and during trial and while awaiting sentence, except when in particular cases restraint may be necessary."[4]

5. Privates against whom charges may be preferred for trial by general court-martial will be confined in the guardhouse before and during trial. While awaiting trial and sentence, or undergoing sentence, they will, if practicable, be kept apart from privates confined for minor offenses or by sentence of an inferior court.[5]

6. Privates *in arrest* may, in the discretion of the commanding officer, be required to attend parades, inspec-

[1] 71st, A. W.

[2] Regarding enlisted men undergoing sentence, see page 69, par. 1, *infra*.

[3] Pars. 904 and 936, A. R. As to placing soldiers in irons, see page 70, par. 3, *infra*.

[4] Par. 936, A. R.

[5] Ib. 907.

tions, drills, school, or other military duties and to assist in policing in and around their barracks. Privates *in confinement* awaiting trial will not be sent to work with prisoners undergoing sentence if it can be avoided; but may, in the discretion of the commanding officer, be required to attend drills, or be sent to work during the usual working hours under charge of a special sentinel.[1]

7. Except as provided in the 24th Article of War or when restraint is necessary, no soldier will be confined without the order of an officer, who shall previously inquire into his offense. Confinement without trial as a punishment for an offense is forbidden. An officer authorizing the arrest or confinement of a soldier will, as soon as practicable, report the fact to his company or detachment commander.[2]

Sec. III. General Provisions Relating to the Arrest of Officers and Soldiers.

1. "No * * * officer commanding a guard shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the forces of the United States; provided the officer committing shall, at the same time, deliver an account in writing, signed by himself, of the crime charged against the prisoner."[3] "Every officer to whose charge a prisoner is committed shall, within twenty-four hours after such commitment, or as soon as he is relieved from his guard, report in writing,[4] to the commanding officer, the name of such prisoner, the crime charged against him, and the name of the officer committing him."[5]

2. "All persons under guard without written charges[6] will be released by the old officer of the day at guard

[1] Par. 907, A. R.

[2] Ib., 905 and 906.

[3] 67th A. W.

[4] This report is usually written in the "Guard Report Book," and presented to the commanding officer by the old officer of the day at guard mounting.

[5] 68th A. W.

[6] Charges are usually handed to the old officer of the day at guard mounting; or in serious cases, he is notified that charges will be turned in to the commanding officer as soon as they can be made out.

mounting, unless specific orders to the contrary have been given in each case by the commanding officer."[1] No officer or soldier put in arrest or confinement will be so restrained more than eight days, or until such time as a court-martial can be assembled.[2]

3. On the march, field and regimental staff officers, and regimental noncommissioned staff officers, in arrest, will follow in rear of their respective regiments; medical officers, hospital stewards, privates of the hospital corps, and post noncommissioned staff officers, in rear of the commands to which they belong; company officers, noncommissioned officers, and privates in rear of their respective companies; and all persons in confinement, with and under charge of the guards of their respective commands, unless otherwise specially directed.[3]

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[1] Par. 908, A. R. [2] 70th A. W. [3] Par 902, A. R.

COURTS-MARTIAL.

COMPOSITION.

1. COURTS-MARTIAL are composed of commissioned officers only. All officers of the Regular Army, except those on the retired list[1] and professors of the U. S. Military Academy, are eligible for detail for the trial of offenders belonging to the Regular Army;[2] but no officer will be detailed for the trial of an officer superior to himself in rank when it can be avoided.[3]

2. Officers of the Regular Army and of the Marine Corps, detached for service with the Army by order of the President, may be associated together for the trial of offenders belonging to either of these bodies.[4] In like manner regular officers *holding volunteer commissions* may be associated with volunteer officers for the trial of volunteers. But with these exceptions officers of the Regular Army are not competent to sit on courts for the trial of offenders belonging to other forces.[5]

3. Officers of volunteers and of the militia, when the latter are called into the service of the United States, are competent to act as members of courts for the trial of regular officers or soldiers. Militia officers are also competent to sit upon courts for the trial of volunteers. But courts-martial for the trial of militia must be composed of militia officers only.[6]

4. In the U. S. military service, the following-named courts-martial are authorized: 1st, the "General Court-

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[1] Sec. 1259, R. S.

[2] An "acting assistant surgeon," being a civilian, is not eligible, and chaplains are not so detailed in practice.

[3] 79th A. W.

[4] 78th A. W.

[5] 77th A. W.

[6] Sec. 1658, R. S.

martial;" 2d, the "**Summary Court;**" 3d, the "**Field-officer's Court;**" 4th, the "**Garrison Court-martial;**" 5th, the "**Regimental Court-martial.**"

5. **The General Court-martial**, being the most important, will be first considered—the others, ordinarily called "**Inferior Courts-martial,**" in the order named. But, as all courts-martial have much in common in regard to their jurisdiction, procedure, punishment, etc., the text may, as a rule, be regarded as apposite to all, unless the general court is specially mentioned. Exceptions in regard to jurisdiction, etc., will be made as each inferior court is considered.

6. **A General Court-martial** may consist of any number of members from five to thirteen, inclusive, and a judge-advocate; but of not less than thirteen members when this number can be convened without manifest injury to the service.[1] When, in the course of a trial, the court is reduced in number by reason of absence, challenge, or the relieving of members, it may proceed with business so long as *five* members remain. When from any cause a general court is reduced below the minimum, five, the remaining members should direct the judge-advocate to report the fact to the convening authority, and await further orders. In such a case, if the trial has not been entered upon, new members may be added; but if any testimony has been taken, the court had best be dissolved and a new one ordered.[2]

CONSTITUTION.

1. The President is empowered to institute general courts-martial—1st, as Commander in chief of the Army, under the Constitution; 2d, in the special contingency mentioned in the next paragraph; 3d, in the particular cases provided for by section 1230, Revised Statutes.

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[1] 75th A. W. "A decision of the appointing authority as to the number that can be assembled without injury to the service is conclusive." (Par. 917, A. R.)

[2] For form of order for general court, see page 119, *infra*.

2. Any general officer commanding an army, a territorial division, or a department, or colonel commanding a separate department, may appoint a general court-martial whenever necessary.[1] But when any such commander is the accuser or prosecutor of any *officer* under his command the court must be appointed by the *President*.[2] In time of war this power is extended to the commander of a tactical division or of a separate brigade; but in this case when such commander is the accuser of any *person* under his command the court must be appointed by the *next higher commander*.[3]

3. The Superintendent of the U. S. Military Academy has power to convene general courts-martial for the trial of cadets, subject to the conditions just stated regarding other general courts.[4]

4. The officer who appoints a court-martial—general, garrison, or regimental—may dissolve it, and control its existence, but not the subject-matter of its deliberations. In the absence of special orders or legislation to that effect, personal presence within the territorial limits of his department is not essential to the validity of commands given by a department commander to be executed within such limits, such, for instance, as the appointment of a court-martial.

JURISDICTION.

Sec. I. Courts-martial derive their existence solely from acts of Congress, and their jurisdiction is limited to the purpose of the maintenance of military discipline. Their decisions, within their jurisdiction, are not reviewable by any courts whatever.[5] The 30th Article of War relates to an exceptional procedure, not necessary to consider in this connection.

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[1] See par. 4, this article.

[2] 72d A. W. As to when a commander is "the accuser or prosecutor," see Digest, Opin. J. A. G., p. 82.

[3] 73d A. W.

[4] Sec. 1326, R. S.

[5] See authorities cited in note 1, page 313, Digest, Opin. J. A. G.

2. Courts-martial have exclusive jurisdiction to try for acts constituting military offenses only, and also jurisdiction to try for acts which besides constituting military offenses are civil crimes. In the latter case the military ordinarily gives precedence to the civil court, but when an officer or a soldier has been arraigned before a duly constituted court-martial for an offense triable by it, the jurisdiction thus attached can not be set aside by the process of a State court.[1]

3. *As regards persons*, courts-martial have jurisdiction, at all times and in all places, over officers and soldiers of any troops, whether militia or others, mustered and in pay of the United States,[2] over officers and soldiers of the marines, when detached for service with the Army,[3] over persons who fraudulently enlist in the service of the United States and receive pay or allowance thereunder,[4] and over offenders, in general, to whom, owing to the commission of a crime, military jurisdiction has legally attached—as by an arrest or confinment—before their discharge from service. This jurisdiction over persons in the military service covers all military offenses committed by them, whether within or beyond the territorial jurisdiction of the United States. Military offenses are not territorial.[5]

4. As a rule, military jurisdiction ends when a soldier is discharged. The present exceptions to this rule are, discharged officers and soldiers guilty of frauds against the United States under the 60th Article of War, and discharged officers granted trial after summary dismissal, under section 1230, Revised Statutes.

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[1] See authorities cited in note 1, page 329, Digest, Opin. J. A. G.

[2] 64th A. W. This includes retired officers and soldiers.

[3] Sec. 1621, R. S.

[4] Act of July 27, 1892; see G. O. 57, A. G. O., 1892. *A fraudulent enlistment* is an enlistment procured by means of a willful misrepresentation in regard to a qualification or disqualification for enlistment, or by intentional concealment of a disqualification, which has had the effect of causing the enlistment of a man not qualified to be a soldier, and who but for such false representation or concealment would have been rejected.

[5] J. A. G.

5. *In time of war* this jurisdiction extends to "all retainers to the camp and all persons serving with the armies of the United States in the field, though not enlisted soldiers;"[1] to any person who "relieves the enemy with money, victuals, or ammunition, or knowingly harbors or protects an enemy;"[2] or who "holds correspondence with, or gives intelligence to, the enemy, either directly or indirectly;"[3] and to spies.[4]

6. *As regards offenses*, the jurisdiction embraces, the offenses specifically defined in the Articles of War, or included under the general terms of the 61st and 62d articles;[5] the offense of military persons trading with the enemy,[6] and that of fraudulently enlisting in the service of the United States.[7]

7. A court having once duly assumed jurisdiction of an offense and person, can not, by any wrongful act of the accused, be ousted of its authority or discharged from its duty to proceed fully to try and determine, according to law and its oath. Thus the fact that, pending the trial, the accused has escaped from military custody, furnishes no ground for not proceeding to a finding, and, in the event of conviction, to a sentence, in the case; and the court may and should find and sentence as in any other case.

Sec. II. **General Courts-Martial** have, *as regards persons and with reference to other courts-martial, exclusive jurisdiction* over officers,[8] cadets,[9] and "candidates for promotion."[10] Over enlisted men, other than candidates

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[1] 63d A. W.

[2] 45th A. W.

[3] 46th A. W.

[4] Sec. 1343, R. S.

[5] Military offenses are non-territorial. See page 12, par. 3, *supra*.

[6] Secs. 5306 and 5313, R. S.

[7] Act of July 27, 1892; see G. O. 57, A. G. O., 1892. For definition of fraudulent enlistment, see page 12, note 4, *supra*.

[8] 83d A. W.

[9] Sec. 1326, R. S.

[10] Act of July 30, 1892.

for promotion, they have concurrent jurisdiction with the inferior courts in cases cognizable by the latter.[1]

2. *As regards offenses,*[2] they have *exclusive jurisdiction* over the offense of fraudulent enlistment;[3] over all offenses punishable capitally;[4] over those defined in the 58th Article, when committed in time of war; and over those for which the limit of punishment prescribed by the President, previous convictions being considered, is in excess of the limit of the punishing power of an inferior court as defined by the 83d Article of War.[5] Over *all serious offenses* (including those named in the 58th Article, except murder, in time of peace) for which a limit of punishment has not been prescribed, but for which the usual punishment fixed by custom of service exceeds the punishing power of an inferior court, general courts-martial also have *exclusive jurisdiction.* Over all *minor offenses* they have *concurrent jurisdiction* with the inferior courts; but no case should be referred to a general court-martial that can properly be tried by an inferior court. If there be any doubt about the jurisdiction of the lower court, the matter should be referred to the authority competent to order a general court-martial in the case, for his decision.

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[1] Par. 931, A. R. prescribes that noncommissioned officers above the rank of corporal will not, if they object thereto, be brought to trial before regimental, garrison, or summary courts-martial, without the authority of the officer competent to order their trial by general court-martial.

[2] Military offenses, wheresoever committed, are punishable under the Articles of War; see page 12, par. 3, *supra.*

[3] For definition of fraudulent enlistment, see *ib.*, note 4.

[4] 83d A. W.

[5] The rule of substitution of punishments given on page 62, *infra,* will be used in determining as to the jurisdiction of an inferior court, *e. g.,* the limit of punishment prescribed for "absence from duty as company or hospital cook" is "forfeiture of $10;" if two previous convictions be considered with such a case, the forfeiture may be increased by the rule for previous convictions, given on page 59, *infra,* to $20, which forfeiture is greater than an inferior court may award; but by the rule for substitution of punishments, this may be made $10 forfeiture and twenty days confinement, which is within the limit of the punishing power of an inferior court.

CHARGES AND SPECIFICATIONS.

Sec. I. **A military charge** corresponds to a *civil indictment*. It consists of two parts—the technical "*charge*," which designates the alleged offense in general terms, and the "*specification*," which sets forth the facts constituting the same. The requisite of a *charge* is, that it shall be laid under the proper Article of War or other statute; of a *specification*, that it shall set forth facts sufficient to constitute the particular offense. Under the general term "charges" any number of technical charges and their specifications may be included.

2. When a charge is to be preferred, the Articles of War should be examined to see if the alleged offense is specially provided for in any article; if so, the charge should be laid under that article. In drawing up the technical charge, a brief description of the offense, such as "Absence without leave," "Drunkenness on duty," "Sleeping on post," should be made, and the phrase "in violation of the —— Article of War" added thereto. If the offense is not provided for in any *specific* article, the charge should be laid under one of the *general* articles, the 61st or 62d, depending on the character of the offense and the rank of the offender. If the charge is laid under the 61st Article, it may be stated as "Conduct unbecoming an officer and a gentleman;" [1] if under the 62d, the technical charge should be briefly stated as "Larceny," "Burglary," "Drunkenness," etc., according to the offense, followed by the phrase "to the prejudice of good order and military discipline," or when the offense can not be briefly described, it may be charged simply as "Conduct to the prejudice of good order and military discipline."

3. When an offense is specifically provided for in an Article of War the charge will be laid under that article and not under the 62d Article. Especially is it wrong

[1] As to offenses under the 61st A. W., see Digest, Opin. J. A. G., pp. 61–66.

to lay a charge under the 62d Article when the offense falls under an article which prescribes a fixed punishment.

4. In case of an absence from any appointed parade, drill, or other exercise, but not from the limits of the post, the charge should be laid under the 33d Article of War; in case of absence from the post, or command, under the 32d; and sometimes, in order that the court may be able to judge of the full nature of the offense, under both, as when some duty, other than an ordinary roll call, is neglected; *e. g.*, when a soldier, regularly detailed for guard, absents himself not only from guard mounting but also from his post.

5. Soldiers found drunk on any guard, party, or other duty after having been actually placed on such duty, but not until then discovered to be drunk, should be charged with violation of the 38th Article of War; otherwise, as when found to be intoxicated at guard mounting or upon formation for drill, muster, etc., with violation of the 62d Article.

6. Accused persons will not be joined in the same charge, nor tried on joint charges, unless for concert of action in an offense. To warrant the joining of several persons in the same charge, the offense must be such as requires for its commission a combination and must have been committed in concert, in pursuance of a common intent.

7. As to whether an act which is a civil crime is also a military offense no rule can be laid down which will cover all cases, for the reason that what may be a military offense under certain circumstances may lose that character under others. For instance, larceny by a soldier from a civilian is not always a military crime, but it may become such in consequence of the particular features, surroundings, or locality of the act. What these may be can not be anticipated with a sweeping rule, comprehensive enough to provide for every possible conjunction of circumstances. Each case must be considered on its own facts. But if the act be committed on a military reservation, or other ground occupied by the army, or in its

neighborhood, so as to be in the constructive presence of the army; or if committed while on duty, particularly if the injury be to a member of the community whom it is the offender's duty to protect; or if committed in the presence of other soldiers, or while in uniform; or if the offender use his military position, or that of another, for the purpose of intimidation or other unlawful influence or object—such facts would be sufficient to make it prejudical to military discipline within the meaning of the 62d Article of War.[1]

Sec. II. **The specification** need not possess the technical nicety of an indictment at common law. A bald statement of facts is sufficient, provided the legal offense itself be distinctly and accurately described.[2]

2. In order that the accused may be left in no doubt as to the precise offense which he is called on to disprove, the *time* and *place* of an alleged offense should be stated as carefully as possible. When any doubt exists as to the exact date and locality, it may be stated that the act specified was committed "on or about" a certain time, or "at or near" a given place. In preparing several specifications under a given charge, the time and place of the alleged offense should be given in each.

Sec. III. Many of the Articles of War include two or more offenses. When a charge is to be laid under such an article, the particular offense committed should be stated. Laying a specification in an alternative form is bad pleading. It is wrong to charge with "selling *or* through neglect losing," in violation of the 17th Article of War.

2. The prosecution is at liberty to charge an act under two or more forms, when it is doubtful under which it will more properly be brought by the testimony. In the military practice, the accused is not entitled to call upon

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[1] J. A. G.

[2] VII, Opin. Att'y Gen'l, p. 604.

the prosecution to *elect* under which charge it will proceed in such, or indeed any, case.

Sec. IV. Charges preferred for offenses cognizable by inferior courts or by a general court will be laid before the post commander, who will examine them as to the rank of the accused and the nature of the offense. Then, in accordance with what is stated on pages 75 and 81, *infra*, in regard to the jurisdiction of inferior courts, he will, if he thinks the accused should be tried, *refer to a summary court* any charge against an enlisted man[1] for an offense for which the prescribed limit of punishment, previous convictions considered,[2] does not exceed the limit defined in the 83d Article of War, or for which the punishment usually given does not exceed the same limit, and, in accordance with what is stated on page 13, Sec. II, and on page 14, par. 2, *supra*, in reference to the jurisdiction of a general court-martial, he will *forward to the authority competent to order a general court* any charge against an officer, a cadet, a candidate for promotion, or any charge for an offense capitally punishable or for which the prescribed limit of punishment or the punishment usually given exceeds the limit defined in the 83d Article.[3]

2. "Commanding officers will, before forwarding charges, personally investigate them, and, by indorsement on the charges, will certify that they have made such investigation, and whether, in their opinion, the charges can be sustained."[4]

3. Charges against an enlisted man forwarded to the authority ordering a general court-martial, or submitted to a summary, garrison, or regimental court, must be

[1] Candidates for promotion excepted.

[2] See page 59, note 1, *infra*.

[3] Charges against a man reported under par. 134 A. R., as a deserter from the Navy or Marine Corps, should be held until instructions are received from the War Department.

[4] Par. 928, A. R.

accompanied by the proper evidence of previous convictions, when such evidence is admissible.[1]

4. Charges against an enlisted man forwarded to the authority competent to order a general court-martial for his trial will also be accompanied by a statement of service[2] in accordance with the form given on page 118, *infra*.

In case of a deserter the surgeon's report required by par 121, A. R., will also be forwarded.[3]

Sec. V. After charges have been formally referred by competent authority to a court-martial for trial, the court is not authorized, in its discretion and upon its own motion, to strike out a charge or specification, or to direct or permit the judge-advocate to drop, or withdraw, such charge or specification, or to enter a *nolle prosequi* as to the same. For such action the authority of the convening officer is requisite. Where, however, by a special

[1] Par. 929, A. R. (*a*) All charges for offenses cognizable by inferior courts-martial *must* be accompanied by evidence of all previous convictions of the soldier during his current enlistment and within eighteen months preceding trial. When such charges are referred to a summary court, reference to previous convictions by the same court will be made on them, and certified copies of orders publishing convictions by other military courts will be inclosed. Evidence of convictions by civil courts will not be submitted. If the charges are referred to a garrison or regimental court-martial, or are forwarded to the authority competent to order a general court, authenticated copies of summary court records (see page 49, par. 2, *infra*) together with certified copies of orders publishing convictions by other military courts, must be inclosed therewith.

(*b*) Charges for offenses cognizable only by general courts-martial (*i. e.*, where the usual punishment for the offense exceeds that which an inferior court can inflict), but *not*, ordinarily, punishable by dishonorable discharge, *should not* be accompanied by evidence of previous convictions, *unless* the soldier has been tried five or more times within the preceding eighteen months of his current enlistment, in which case evidence *must* be forwarded.

(*c*) Charges for offenses ordinarily punishable by dishonorable discharge *should not* be accompanied by evidence of previous convictions, *except* in case of *desertion*, in which case evidence of previous convictions of *desertion* must be submitted.

[2] See page 66, par. 5, *infra*.

[3] For form, see page 118, *infra*.

plea or objection, an *issue* is made by the accused as to the sufficiency of any charge and specification, the court, without referring the question to the convening officer, is empowered to sustain the plea or objection, and quash or strike out the charge.

ADDITIONAL CHARGES.

1. After the accused has been arraigned upon certain charges, has pleaded thereto, and the trial on the same has been entered upon, new and additional charges, which the accused has had no notice to defend, can not be introduced or the accused required to plead thereto. Such charges should be made the subject of a separate trial, upon which the accused may be enabled properly to exercise the right of challenge to the members of the court and effectively to plead and defend.

ORGANIZATION.

1. The authority appointing a court-martial designates the place for holding the court, the hour of meeting, the members of the court, and a judge-advocate.[1]

2. Courts will be assembled at posts or stations where trial or examination will be attended with the least expense. They will, as far as practicable, hold their sessions so as to interfere least with ordinary routine duties. When necessary for the sake of immediate example, a court may be ordered to sit without regard to hours.[2]

3. A *general court-martial* assembles, at its first session, in accordance with the order convening it; thereafter, according to adjournment. The members wear full-dress uniform with their swords, except in inclement weather, when the president of the court may authorize undress uniforms; the judge-advocate appears in undress uniform without the sword; the accused, if an officer or non-commissioned officer, appears in full dress, if a private

[1] Pars. 917 and 918, A. R. [2] Ib., 918.

in undress, and is without arms in any case. Military witnesses wear full dress, with their swords or side arms. The accused should not be brought before the court in irons, unless there are good reasons to believe that he will attempt to escape or conduct himself in a violent manner; but the fact that a prisoner has been tried in irons can not, in any case, affect the validity of the proceedings.

4. When the court is ready to proceed, the members take seats at a table provided for their use; the president sits at the head of the table and the other members at his right and left alternately, according to rank. The judge-advocate sits at the foot of the table; the accused and his counsel at a table provided for them and placed in a convenient position; a witness, when testifying, is seated near the judge-advocate, and the reporter at a table placed near the witness' chair.

5. The *order of procedure* is given in detail in the "Form for record of a general court-martial," page 119 *infra*. During the reading of the order convening the court and the arraignment, the judge-advocate and the accused should stand; while the court and the judge-advocate are being sworn, all stand; when a reporter, an interpreter, or a witness is being sworn, he and the judge-advocate should stand; and when the judge-advocate, the accused, or his counsel addresses the court, he should rise.

6. The organization of the court is complete on the swearing in of the members and the judge-advocate.

THE MEMBERS.

1. **Members** of a court-martial will be named in the order appointing it, in accordance with their rank. They will sit according to rank as announced, and will "behave with decency and calmness."[1] A court-martial has no power to punish its members, but a member is liable for

[1] Par. 917, A. R., and the 87th A. W.

improper conduct as for any other offense against military discipline. Improper words used by a member should be taken down in writing, and any disorderly conduct reported to the appointing authority.[1]

2. "Members of a court-martial, in giving their votes, shall begin with the youngest in commission."[2] In all deliberations, the law secures the equality of the members.

3. When a member is prevented from attending a session of the court, he will communicate the cause to the judge-advocate, so that the same may be entered in the record of proceedings.

4. A member stationed at the place where a court-martial sits is liable to duty with his command during adjournment of the court from day to day.[3]

THE PRESIDENT.

1. "A president of the court will not be announced. The officer highest in rank present will act as president."[4] Besides his duties and privileges as a member, the president is the organ of the court to maintain order and conduct its business. He speaks and acts for the court in every instance where a rule of action has been prescribed by law, regulations, or its own resolution. He administers the oath to the judge-advocate, and authenticates by his signature all acts, orders, and proceedings of the court requiring it.

THE JUDGE-ADVOCATE.

1. "The judge-advocate * * shall prosecute in the name of the United States, but when the prisoner has made his plea, he shall so far consider himself counsel

[1] Par. 920, A. R.

[2] 95th A. W. In case of a tie vote on *the findings* or *sentence* the accused is given the benefit of it; but when there is a tie on an objection or motion made by him it is not decided in his favor.

[3] Ib., 918.

[4] Ib., 919.

for the prisoner as to object to any leading question to any of the witnesses, and to any question to the prisoner, the answer to which might tend to criminate him self."[1]

2. *Before the court assembles,* the judge-advocate should note and report any irregularity in the order convening the court, and see that the charges are technically and correctly drawn. He may ordinarily correct obvious mistakes of form, or slight errors in name, dates, amounts, etc., but he should not, without the authority of the convening officer, make *substantial* amendments in the allegations, or—least of all—reject or withdraw a charge or specification, or enter a *nolle prosequi* as to the same, or substitute a new and distinct charge for one transmitted to him for trial.

3. The judge-advocate should acquaint the prisoner with the accusations against him, inform him of his right to have counsel,[2] and to testify in his own behalf,[3] and furnish him with a copy of the charges, if desired. He may ask a prisoner how he intends to plead, but, when the accused is an enlisted man, he should in no case try to induce him to plead guilty, or leave him to infer that, if he does so, his punishment will be lighter. When, however, such a plea is voluntarily and intelligently made, the judge-advocate should properly advise the prisoner of his right to offer evidence in explanation of his offense, and, if any such evidence exists, should assist him in securing and presenting it.

4. The judge-advocate should also, before the court assembles, obtain a suitable room for the court, see that it is in order, procure the requisite stationery, summon necessary witnesses,[4] make a preliminary examination of the latter, and as far as possible systematize his plans for conducting the case.

5. *During the trial* the judge-advocate conducts the case for the Government. He executes all orders of the court;

[1] 90th A. W.
[2] See page 25, *infra*,
[3] See page 40, par. 2, *infra*,
[4] See page 32, *infra*.

reads the convening order to the accused; swears the members of the court, the reporter, interpreter, and all witnesses; arraigns the accused; examines witnesses; keeps, or superintends the keeping of, a complete and accurate record of the proceedings,[1] and affixes his signature to each day's proceedings.[2] In conjunction with the president of the court he authenticates the record by his signature,[2] and at the end of the trial transmits the same to the convening authority.[3]

6. While the court is in open session the judge-advocate should respectfully call the attention of the court to any illegalities in its action, and to any irregularities in its proceedings. He should act as legal adviser of the court so far as to give his opinion upon any point of law arising during the trial, when it is asked for by the court, but not otherwise.

7. *When a court sits in closed session* the judge advocate will withdraw, and when his legal advice or assistance is required, it will be obtained in open court.[4]

8. Throughout the trial the judge-advocate should do his utmost to present the whole truth of the matter in question. He should oppose every attempt to suppress facts or to torture them into false shapes, to the end that the evidence may so exhibit the case that the court may render impartial justice.

9. The judge-advocate should regard his duty toward the accused as not strictly limited by the 90th Article of War, and when the latter is ignorant and without counsel the judge-advocate should take care that he does not suffer upon the trial from any ignorance or misconception of his legal rights, and has full opportunity to interpose such pleas and make such defense as may best bring out the facts, the merits, or the extenuating circumstances of his case.

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[1] For form for record, see page 119, *infra*.

[2] Par. 954, A. R.

[3] Ib., 955. The proceedings of all courts appointed by the President will be sent direct to the Secretary of War. (Par. 892, A. R.)

[4] Par. 921, A. R.

10. Whenever the court adjourns to meet at the call of the president, the judge-advocate will notify the members of the time designated by the president for reassembling.

COUNSEL.

1. The commanding officer of a post where a general court-martial is convened will, at the request of any prisoner who is to be arraigned, detail a suitable officer as counsel for the defense. Officers directly responsible for the discipline of organizations serving at the post and the trial officer of the summary court are not eligible for this duty. If there be no such officer available for detail, the fact will be reported to the authority appointing the court for his action.[1]

2. An officer detailed as counsel for a soldier before a general court-martial should guard the interests of the accused by all honorable and legitimate means known to the law.[2] He should not obstruct the proceedings with frivolous or manifestly useless objections.

3. If the judge-advocate keeps the record in *long-hand*, the counsel will be required to reduce his questions and arguments to writing; but if the court has a *short-hand* reporter, the counsel will be allowed to question witnesses and address the court orally.

REPORTER.

1. "The employment of a stenographic reporter, under section 1203, Revised Statutes, is authorized for general courts only, and in cases where the convening authority considers it necessary. The convening authority may also, when necessary, authorize the detail of an enlisted man to assist the judge-advocate of a general court in preparing the record."[3]

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[1] Par. 926, A. R. This privilege of being represented by counsel does not apply to cases before inferior courts.

[2] Par. 926, A. R.

[3] Ib. 958.

2. When a stenographic reporter is employed under section 1203, Revised Statutes, he will be paid not to exceed $10 a day during the whole period of absence from his residence, traveling or on duty. This will be in full for taking and transcribing all notes, making such number of copies to be made at one writing as the judge-advocate may require, and, unless otherwise specially ordered by the Secretary of War, in full for all services rendered and expenses incurred by the reporter.[1]

3. "In special cases, when authorized by the Secretary of War, stenographic reporters may be employed at rates not exceeding 25 cents per folio (one hundred words) for taking and transcribing the notes in shorthand, or 10 cents per folio for other notes, exhibits, and appendices."[1]

4. "Reporters will be paid by the Pay Department, on the certificate of the judge-advocate."[1]

5. "No person in the military or civil service of the Government can lawfully receive extra compensation for clerical duties performed for a military court."[2]

INTERPRETER.

1. "Interpreters to courts-martial are paid by the Pay Department upon the certificate of the judge-advocate that they were employed by order of the court. They will be allowed the pay and allowances of civilian witnesses."[3]

CHALLENGE.

1. "Members of a court-martial may be challenged by a prisoner, but only for cause stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time."[4]

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[1] Par. 959, A. R.

[2] Ib., 960.

[3] Ib. 961. As to pay, etc., of civilian witness, see page 38, *infra*.

[4] 88th A. W. This Article of War authorizes the exercise of the right of challenge before all courts except field-officers' courts and summary courts.

2. A positive declaration by the challenged member that he is not prejudiced against the accused, nor interested in the case, will ordinarily satisfy the accused, and, in the absence of material evidence in support of the objection, will justify the court in overruling it. If, however, the statement is unsatisfactory, or the member makes no response, the accused may offer testimony in support of his objection or may subject the challenged member to an examination by interrogatories in the same manner that a juror is examined in criminal courts. If the accused desires that the challenged member be put on his *voir dire*, the judge-advocate will administer the oath before the court is sworn.

3. Courts should be *liberal* in passing upon challenges, but they will not entertain an objection that is not *specific*, nor one upon the mere assertion of the accused, if it is not admitted by the challenged member. A challenge alleging that a member is the author of the charges and a material witness is sufficient ground to justify the court in sustaining it.

4. The court of itself can not excuse a member in the absence of a challenge. A member, not challenged, who thinks himself disqualified, can only be relieved by application to the convening authority.

5. The judge-advocate is not challengeable; but in case of personal interest in the trial he should apply to the convening authority to be relieved.

OATHS.

1. **Of Members.**—The judge-advocate shall administer to each member of the court, before proceeding upon any trial, the following oath, which shall also be taken by all members of regimental and garrison courts-martial:[1]

"You, A B, do swear that you will well and truly try and determine, according to evidence, the matter now be-

[1] Whenever the same court-martial tries more than one prisoner on separate and distinct charges, the court will be sworn at the commencement of each trial.

fore you, between the United States of America and the prisoner to be tried, and that you will duly administer justice, without partiality, favor, or affection, according to the provisions of the rules and articles for the government of the armies of the United States, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the custom of war in like cases; and you do further swear that you will not divulge the sentence of the court until it shall be published by the proper authority, except to the judge-advocate; neither will you disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in a due course of law. So help you God."[1]

2. **Of the Judge-Advocate.**—When the oath has been administered to the members of a court-martial, the president of the court shall administer to the judge-advocate, or person officiating as such, an oath in the following form:[2]

"You, A B, do swear that you will not disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in due course of law; nor divulge the sentence of the court to any but the proper authority, until it shall be duly disclosed by the same. So help you God."[3]

3. **Of Witness.**—All persons who give evidence before a court-martial shall be examined on oath, or affirmation, in the following form:

"You swear (or affirm) that the evidence you shall give, in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth. So help you God."[4]

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[1] 84th A. W., as amended by the act of July 27, 1892; see G. O. 57, A. G. O., 1892.

[2] During the administration of the oaths to the court and the judge-advocate, all members of the court, the judge-advocate, and the accused stand.

[3] 85th A. W.

[4] 92d A. W.

4. **Of Reporter.**—"You swear that you will faithfully perform the duties of reporter to this court. So help you God."[1]

5. **Of Interpreter.**—"You swear that you will truly interpret in the case now in hearing. So help you God."

6. **Voir Dire.**—"You swear that you will true answers make to questions touching your competency as a member (or witness) in this case. So help you God."

7. Judge-advocates of departments and of courts-martial, and the trial officers of summary courts, are authorized to administer oaths for the purposes of military justice, and for other purposes of military administration.[2]

POSTPONEMENT.

1. If postponement is *necessary*, application therefor should properly be made to the convening authority before the accused is arraigned. The court may, "for reasonable cause, grant a continuance to either party, for such time, and as often as may appear to be just: *Provided*, That if the prisoner be in close confinement, the trial shall not be delayed for a period longer than sixty days."[3]

2. Upon application by the accused for postponement of trial because of the absence of a witness, it should distinctly appear, on his oath, that the witness is material, and why, and that the accused has used due diligence to procure his attendance, and has reasonable ground to believe, and does believe, that he will be able to procure such attendance within a reasonable time stated.

3. Application for *extended* delay will, when practicable, be made to the authority appointing the court. When made to the court, and if, in the opinion of the court, it is well founded, it will be referred to the convening authority to decide whether the court shall be adjourned or dissolved.

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[1] The reporter must be sworn in each case.

[2] Act of July 27, 1892; see G. O. 57, A. G. O., 1892.

[3] 93d A. W.

ARRAIGNMENT.

1. The court being organized, and both parties ready to proceed, the judge-advocate will read the charges and specifications, separately and in order, to the accused, and ask him how he pleads to each—"guilty," or "not guilty." The order pursued, in case of several charges or specifications, will be to arraign on the first, second, etc., specifications to the first charge, then on the first charge, and so on with the rest.[1]

PLEAS.

1. Ordinarily the plea of the accused is "guilty" or "not guilty" to each charge and specification; or, guilty of a specification excepting certain words, and of the excepted words not guilty; or, as when charged with an offense which includes a lesser one of kindred degree, guilty to the specification except certain words, substituting therefor certain others, and to the charge not guilty, but guilty of the lesser kindred offense.[2]

2. A plea of guilty does not necessarily exclude evidence. In cases of discretionary punishment[3] a full knowledge of the circumstances attending the offense is essential to the court in measuring the punishment and to the convening authority in acting on the sentence. It is, therefore, proper for the court to take evidence after a plea of guilty, except when the specification is so descriptive as to disclose all the circumstances of mitigation or aggravation.

3. When the punishment is fixed, such full knowledge of the attendant circumstances is still more important to the reviewing authority, in order that he may be able to comprehend the entire case and correctly judge whether the sentence should be approved or disapproved. It is

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[1] During the arraignment the judge-advocate and the accused stand.

[2] See page 47, par. 3, *infra*.

[3] See page 50, *infra*.

especially necessary in capital cases that all the facts of the case be exhibited in evidence.

4. In practice, the absence of evidence to illustrate the offense has been found particularly embarrassing in cases of *desertion*. In a majority of cases in which the plea is "guilty," the record is found to contain no testimony whatever; and a full and intelligent comprehension of the nature of the offense is thus, in many instances, not attainable.

5. When testimony is heard after a plea of "guilty," the accused may cross-examine the witnesses, produce evidence to rebut their testimony, offer evidence as to character, and address the court in extenuation of the offense or in mitigation of punishment.

6. When the accused pleads "guilty," and without any evidence being introduced makes a statement inconsistent with his plea, the statement and plea will be considered together, and if guilt is not conclusively admitted, the court will direct the entry of a plea of "not guilty," and proceed to try the case on the general issue thus made.

7. If the prisoner, from obstinacy or deliberate design, stands mute, or answers foreign to the purpose, the court will proceed to trial and judgment as if the prisoner had pleaded "not guilty."[1]

8. Instead of pleading to the general issue, the accused may plead in bar of trial,[2] either to the jurisdiction, by denying the legal right of the court to try him, or he may make a special plea to any specification, presenting reasons why he should not be tried on it. Such a plea in bar and any argument in its favor should be signed by the accused, appended to the record, and referred to as having been submitted by him. The burden of substantiating such pleas rests on the accused. Both sides should be heard, and the proceedings under the plea recorded.

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[1] 89th A. W.

[2] As to plea of *autrefois acquit* in a case involving both a civil and a military offense, see Digest, Opin. J. A. G., pp. 119 and 328.

If the plea in bar of trial be found valid, the court will report its decision to the convening authority and await further instructions; if, by the special plea, an *issue* is made, the court is empowered to sustain or overrule the plea;[1] when a special plea is made and overruled, the accused will be required to plead to the general issue.

9. A second enlistment in the service of the United States, when the first has not been fulfilled, is not void, but voidable at the option of the United States only; so that a man who, whilst serving under such a second enlistment, commits an offense, can not successfully plead the fraudulent character of his second enlistment in bar of trial. Paragraph 134 of the Regulations relates to soldiers *not charged with crime* who are discovered to be deserters from the Navy or Marine Corps, and does not interpose any obstacle to trial by court-martial for offenses committed while in the military service.

10. The *statute of limitation* (103d A. W.) is not prohibitory as to jurisdiction,[2] but properly a matter of *defense*, which to become effective should be pleaded and proved. By pleading to the general issue the accused waives his right to *plead* the limitation, but the limitation may still be taken advantage of by *evidence* showing that it has taken effect.

ATTENDANCE OF WITNESSES.

Sec. I. "The judge-advocate will summon the necessary witnesses for the trial, but will not summon witnesses at the expense of the Government without the order of the court unless satisfied that their testimony is material and necessary." He "will, whenever it is possible, send subpœnas through military channels."[3]

2. The accused is, in general, entitled to have all the material witnesses for his defense summoned; except when their testimony would be merely cumulative, and

[1] See page 19, Sec. V, *supra*; also, page 127, note 2, *infra*.

[2] See authorities cited in note 5, page 124, Digest, Opin. J. A. G.

[3] Pars. 922 and 924, A. R.

evidently add nothing to the strength of his case. As far as possible, he should be allowed a full and free defense, as the least denial to him of any proper facility, opportunity, or latitude for it may serve to defeat the ends of justice.

Sec. II. *To procure the attendance of witnesses stationed or residing within the State, Territory, or District in which the court is ordered to sit, the judge-advocate will proceed as follows:*

1. If the desired witness is a *military person*, stationed or residing at or near the place where the court is in session, the judge-advocate will notify him verbally, or by a note, that he is wanted as a witness; if he is stationed or resides so far from where the court sits that travel is necessary, the judge-advocate will send him a summons[1] through the authority competent to order the travel.

2. If the desired witness is a *civilian*, living near the post where the court is convened, duplicate subpœnas[2] will be prepared, one of which will be served upon the witness by the judge-advocate or by any person instructed by him; if the residence of the witness wanted is not near the post, but still within the State, etc., the judge-advocate will send the duplicate subpœnas to the convening authority, requesting service of the same.

3. Service is made, under court-martial practice, by a personal delivery of the subpœna to the witness; and *proof* of service by returning the duplicate original to the judge-advocate indorsed as explained in the form published on page 139, *infra*. Any person instructed by the judge-advocate or post commander may serve the subpœna,[3] but the service *must be personal*.

4. Should a witness fail to appear after due and reasonable notice, the judge-advocate has power to issue the like process to compel him to appear and testify which courts of criminal jurisdiction within the State, Territory, or District where such court is convened may lawfully issue.[4]

[1] For form, see page 138, *infra*.
[2] Ib.
[3] Par. 923, A. R.
[4] Sec. 1202, R. S.

This power also includes the power to execute such process through an officer, who shall be specially charged with its execution.[1]

5. Whenever it becomes necessary to enforce the attendance of a witness, the judge-advocate will issue a warrant of attachment,[2] directing and delivering it for execution to an officer designated by the department commander for the purpose. He will also deliver to this officer the subpœna, indorsed with affidavit of service, (to be returned when the warrant is executed), and a certified copy of the order appointing the court-martial.[3]

6. In executing such process, it is lawful to use only such force as may be necessary to bring the witness before the court. Whenever force is actually required, the post commander, nearest witness' residence, will furnish a military detail sufficient to execute the process.[3]

7. If, in executing this legal process, the officer detailed for that purpose should be served with a writ of *habeas corpus* from any United States court, or by a United States judge, for the production of the witness, the writ will be promptly obeyed and "the person alleged to be illegally restrained of his liberty will be taken before the court from which the writ has issued, and a return made setting forth the reasons for his restraint. The officer upon whom such a writ is served will at once report the fact of such service direct to the Adjutant-General of the Army by telegraph."[4]

8. If, however, the writ of *habeas corpus* is issued by any *State* court (or a State judge) it will be the officer's duty to make respectful return, in writing, informing the court that he holds the person named in the writ by authority of the United States pursuant to a warrant of attachment issued under Section 1202 of the Revised Statutes of the United States by a judge-advocate of a lawfully convened court-martial, and that the Supreme

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[1] 12 Opin. Att'y Gen'l, p. 504.

[2] For form see page 140, *infra*.

[3] Par. 923, A. R.

[4] Ib., 971. For general form for return, see page 148, *infra*.

Court of the United States has decided that State courts and judges are without jurisdiction in such cases.[1]

9. After having made the above return, it is the duty of the officer to obey the process of the United States, to hold the prisoner in custody under it, and to refuse obedience to the mandate or process of any other government. And, consequently, it is his duty not to take the prisoner, nor suffer him to be taken, before a State judge or court upon a writ of *habeas corpus* issued under State authority.[2]

Sec. III. *To procure the testimony of witnesses stationed or residing without the State, etc., the following practice will be observed:*

1. A court-martial subpœna will run anywhere, within or beyond the territorial limits of the United States, but a writ of attachment does not run beyond the State, Territory, or District in which the court-martial sits. The testimony of civilian witnesses residing beyond[3] such State, Territory, or District will ordinarily be taken by deposition under the 91st Article of War, but this can not be done when it is necessary that they should be confronted with the accused. In such cases their testimony can only be taken on their voluntarily appearing before the court.

The testimony of military witnesses stationed or residing beyond[3] the State, Territory, or District in which the court sits will also ordinarily be taken by deposition.

2. The method of procedure to obtain a deposition[4] is as follows:

The party, prosecutor or defendant, desiring the deposition, submits to the court a list of interrogatories to be propounded to the absent witness; the opposite party then prepares and submits a list of cross-interrogatories, a reasonable time being allowed for this purpose; redirect and recross-interrogatories are added, if desired; finally the court, having assented to the interrogatories thus sub-

[1] Pars. 969 and 970, A. R. For form for return, see page 146, *infra*.

[2] See 21 Howard, p. 517.

[3] See page 141, note 1, *infra*.

[4] For form, see page 141, *infra*.

mitted, adds such as, in its judgment, may be necessary to elucidate the whole of the witness' testimony.

The interrogatories having been accepted by the court, the judge advocate will prepare duplicate subpœnas[1] requiring the witness to appear in person, at a time and place to be fixed by the officer, military or civil, who is to take the deposition. If the name of this officer is not known, the space for it will be left blank.

The judge-advocate will then send the interrogatories and subpœnas to the convening authority, with a request that the deposition be secured.

Depositions may also be taken before the assembling of the court-martial, on interrogatories and cross-interrogatories or reasonable notice, subject to exceptions when read in court.

3. Judge-advocates of departments and of courts-martial, and the trial officers of summary courts, are authorized to administer oaths and take depositions.[2] If none of these officers are available, any other army officer may be designated to see that the deposition is properly taken;[3] but the oath in such a case must be administered and the deposition authenticated by a civil officer empowered by law to administer oaths for general purposes.

4. Upon the return of the interrogatories and deposition they will be submitted to the court by the president or judge-advocate. The papers will then be properly marked, appended to the record, and referred to in the proceedings, where all action upon the subject necessary for the information of the reviewing authority will be recorded.

5. Upon the receipt of the deposition, the judge-advocate will also prepare and sign the ordinary "accounts for

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[1] For form, see page 138, *infra*.

[2] Sec. 4, act of July 27, 1892; see G. O. 57, A. G. O. 1892.

[3] An officer so designated will, before serving the subpœna, complete it if necessary by inserting the name and official designation of the notary (or other official having authority to administer the oaths), before whom it is to be taken and the date on which and place where it is proposed to take it. When the deposition has been duly taken, he will certify to this fact and transmit it to the president of the court.

a civilian witness,"[1] substituting for the usual statement in regard to attendance before the court a statement that he duly attended as a witness at a certain time and place and duly gave his deposition before a certain official named, and then transmit them to the witness with duplicate copies of the order convening the court. The *period of attendance* can be ascertained from the deposition.

6. In *capital* cases (*i. e.*, those in which the offense is punishable by death),[2] or in cases where the judge-advocate can certify "that the interests of justice demand that the witness shall testify in the presence of the court," the regular subpœnas will be made out by the judge-advocate, certified to as above, if necessary, and transmitted to the department commander, with a request that they be duly forwarded to the witness, if an officer, or to the nearest post commander for service, if the witness is an enlisted man or a civilian.

7. "An officer or enlisted man who receives a summons to attend as a witness before any military court, board, civil court, or other tribunal competent to issue subpœnas, which is sitting beyond the limits of the department where he is serving, will, before starting to obey the summons, forward it through the proper channel to his department commander, that necessary orders, or authority to obey a civil process, may be given. In urgent cases, or when the public interest would be liable to suffer by delay, a post commander may authorize immediate departure, reporting his action and reasons therefor to the department commander."[3]

8. Officers and enlisted men reporting as witnesses before a civil court should receive from the civil authorities the necessary expenses incurred in travel and attendance. Neither mileage nor travel allowances will be paid in such cases by the War Department. If, however, it is absolutely necessary to furnish them transportation in

[1] For form see page 142, *infra*.

[2] In time of peace, desertion is not a capital offense.

[3] Par. 925, A. R.

kind to enable them to appear as witnesses for the Government, before a civil court of the United States, an account of such expenditure, together with the evidence that they were properly subpœnaed and did attend the court, will be forwarded to the War Department for presentation to the Department of Justice. Officers providing such transportation will notify the court, or the marshal thereof, that it was furnished to enable the witnesses to perform the requisite journeys in obedience to the summons.[1]

FEES OF WITNESSES.[2]

1. A *civilian witness* before a court-martial is entitled, upon his discharge, to receive from the judge-advocate a certificate, setting forth the fact of his having been summoned as a witness in the case, and the number of days of his attendance in that capacity before the court. To entitle a witness to the payment of fees, it is not absolutely essential that he should produce a formal subpœna, addressed to and complied with by him, or that he should have been formally summoned in the case. A strict observance, however, of Section I, page 32, *supra*, would require the issue of formal subpœnas to witnesses on both sides, and it is the best practice for the judge-advocate to cause such to be served in each instance.

2. When a civilian witness refuses to testify in answer to proper questions he will not be paid the fees and allowances of a witness.

3. "Civilians in the employ of the Government when traveling upon summons as witnesses before military courts are entitled to transportation in kind from their place of residence to the place where the court is in session and return. If no transportation be furnished they are entitled to reimbursement of the cost of travel actually

[1] Par. 72, A. R.

[2] When the employment of experts is necessary in a trial by court-martial, the judge-advocate will apply to the Secretary of War for authority to employ them and for a decision as to the compensation to be paid them.

performed by the shortest usually traveled route, including transfers to and from railway stations, at rates not exceeding 50 cents for each transfer, and the cost of a double berth in a sleeping car or steamer when an extra charge is made therefor. They are also entitled to reimbursement of the actual cost of meals and rooms at a rate not exceeding $3 per day for each day actually and unavoidably consumed in travel or in attendance upon the court under the order or summons. No allowance will be made to them when attendance upon court does not require them to leave their stations." [1]

4. "A civilian not in Government employ duly summoned to appear as a witness before a military court will receive $1.50 for each day actually and unavoidably consumed in travel or in attendance upon the court under the summons, and 5 cents a mile for going from his place of residence to the place of trial or hearing and 5 cents a mile for returning. Civilian witnesses will be paid by the Pay Department." [2]

5. "The charges for return journeys of witnesses will be made upon the basis of the actual charges allowed for travel to the court, and the entire account thus completed will be paid upon discharge from attendance, without waiting for completion of return travel." [3]

6. "The items of expenditure authorized in paragraphs 962 and 963 (Army Regulations) will be set forth in detail and made a part of each voucher for reimbursement. No other items will be allowed. The correctness of the items will be attested by the affidavit of the witness, to be made when practicable before the judge-advocate, and the voucher will be accompanied by the original summons or a duly certified copy thereof. The certificate of the judge-advocate will be evidence of the fact and period of attendance, and will be made upon the voucher." [4]

7. "Compensation to civilians in or out of Government employ for attendance upon civil courts is payable by the civil authorities." [5]

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[1] Par. 962, A. R.
[2] Ib., 963.
[3] Ib., 964.
[4] Ib., 965.
[5] Ib., 966.

COMPETENCY OF WITNESSES.

1. The question of the competency of a person to give evidence is a matter for the court to decide. As a general rule, all persons are competent witnesses. The exceptions to this rule are, persons insensible to the obligations of an oath; persons deficient in understanding by reason of lunacy, idiocy, infancy, or intoxication; and wives of accused parties, except in case of bodily injury inflicted on the wife by the husband.[1]

2. The act of March 16, 1878, provides, "That in the trial of all indictments, informations, complaints and other proceedings against persons charged with the commission of crimes, offenses and misdemeanors in the United States courts, Territorial courts, and courts-martial, and courts of inquiry, in any State or Territory, including the District of Columbia, the person so charged shall, at his own request, but not otherwise, be a competent witness. And his failure to make such request shall not create any presumption against him." Parties testifying under this act have no exceptional status or privileges; they must take the stand and be subject to cross-examination like other witnesses. The submission, by the accused, of a sworn statement is not a legitimate exercise of the authority to testify conferred by the statute, and such a statement will not be admitted in evidence by the court.

3. In regard to the effect of the above act upon cases in which husbands and wives may be called upon to testify against each other, Wharton states (Crim. Ev., sec. 400): "The reason for the exclusion of husband and wife, when called for or against the other, being social policy, and not interest, statutes abolishing incompe-

[1] I Greenleaf, secs. 326, 367, and 430. The old common-law rule that persons convicted and sentenced for treason, felony, and *crimen falsi* are incompetent has been so changed by practice in the State and United States courts that such conviction would now probably be held to affect the credibility of the witness only. In regard to instructing a child as to the nature of an oath, see G. C. M. O., 10, A. G. O., 1886.

tency resting on interest do not remove the common-law incompetency of husband and wife for or against the other."

EXAMINATION OF WITNESSES.

Sec. I. Courts-martial should in general follow, so far as apposite, the rules of evidence to be found in the common law. They are not, however, bound by any statute in this particular, and it is thus open to them, in the interests of justice, to apply those rules with more indulgence than the civil courts; *e. g.*, to allow more latitude in the introduction of testimony and in the examination and cross-examination of witnesses than is commonly permitted by civil tribunals. The reason for this is that persons on trial by courts-martial are not, or-ordinarily, versed in legal science, and a liberal course should therefore be pursued and excessive technicality avoided.

2. The manner in which witnesses are to be examined lies chiefly within the discretion of the court. The great object is to elicit the truth from the witness; but the character, intelligence, moral courage, bias, memory, etc., of witnesses are so varied as to require an almost equal variety in the manner of interrogation necessary to attain that end.[1]

3. Before the examination of any particular witness is begun, it is customary for the court to require the others to retire. If a witness remains in court after such a request, by mistake or otherwise, the court will decide whether or not he shall be examined; but whether or not it is essential to the discovery of truth that the witnesses shall be thus examined out of hearing of each other, is a matter within the discretion of the court.[1]

4. After a military witness has been sworn, the first question put to him will ordinarily be for the purpose of determining his identification of the accused; the second, when practicable, should be in such form that the answer may show that the witness was so placed as to personally

[1] I Greenleaf, sec. 431.

know something about the matter set forth in the specifications; while the third and subsequent interrogatories should be such as to elicit all the facts, whether they consist of words or actions, that may have come within the witness' personal knowledge.

Sec. II. **Direct Examination.**—Upon direct examination, leading questions are not allowed. This rule, however, is to be understood in a reasonable sense; for, otherwise, the examinations might be most inconveniently protracted. To abridge the proceedings, the witness may be led at once to points on which he is to testify and the acknowledged facts in the case already established be recapitulated to him. The rule is, therefore, not applicable to that part of the examination which is merely introductory.[1]

2. Leading questions are those which plainly suggest the answer desired, or those which, embodying a material fact, admit of a simple *yes* or *no*. The exceptions to the above rule against their admission are: 1st, when the witness appears to be hostile to the party producing him, or in the interest of the other party, or is unwilling to give evidence; 2d, when an omission in his testimony is evidently caused by want of recollection, which a suggestion may assist; 3d, when a witness is called to contradict another, in which case the particular expressions may be used instead of asking witness what was said.[2]

3. When and under what circumstances a leading question may be put is a matter for the court to decide,[2] but it should ordinarily be controlled by the common law rules on the subject.

4. On the direct examination the questions should be material and relevant, and irrelevant questions should be excluded; yet great caution should be exercised in excluding questions on this ground, as many questions which appear irrelevant may "constitute a link in the chain of proof," without bearing directly or immediately upon the charge.

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[1] I Greenleaf, sec. 434. [2] Ib., 435.

5. As a rule, also, the testimony should be confined to facts within the witness' personal knowledge, and matters of opinion excluded; but in matters of common observation, such as drunkenness, or manner, whether insolent, insubordinate, or otherwise, etc., he may state his opinion or belief as to the state of sobriety, or as to the manner of the accused at the time specified. There are, moreover, two other excepted classes of cases in which a witness may give his opinion: 1st, when it is the result of his observation of complex facts which from their nature can not be brought before the court, as in case of the identity of a person or proof of handwriting; 2d, when the case involves a question of science or a knowledge of a specialty, in which case the testimony of experts is admissible. For a witness to be competent in the latter case, it must be shown by the party producing him that he *is an expert.*

6. To refresh his memory, the witness may use a memorandum made at the time of the fact or action to which it refers; such a writing should be exhibited to the court to show its nature.

Sec. III. **Cross-examination.**—The cross-examination should ordinarily be confined to the matter of the direct examination; yet this rule does not apply to questions outside of the main issue, asked for the purpose of testing the motives, prejudices, or credit of the witness.

2. In view of its purpose and significance, a much greater latitude is allowed upon the cross-examination than upon the direct examination; *e. g.*, leading questions being freely allowed, and matters otherwise irrelevant and collateral permitted when the object is to test the knowledge, memory, or animus of the witness, and thus discredit his testimony. Collateral or irrelevant matter can not, however, be entered into for the purpose of contradicting the witness by other testimony and thus discrediting him; though the question whether the witness has not, at some previous time, told a different story (particularizing it as to substance, time, and place), may

be asked with the view of contradicting him in case he answers in the negative. He may also be asked whether he has not previously expressed hostility to the accused.

Sec. IV. **Re-examination.**—Where the witness, in the cross-examination, has made statements at variance with those made upon his direct examination, the party calling him may *re-examine* him to elicit an *explanation* of those statements, or his *motive* in making them. This is strictly the full scope of a re-examination, but the court may, in its discretion, make exceptions in the interest of justice. When, however, upon cross-examination, new matters have been introduced, the witness may be re-examined upon these.[1]

Sec. V. **Rebuttal.**—Witnesses in rebuttal may be called by the judge-advocate, to support the character for veracity of his witnesses impeached by the accused; to impeach the character of witnesses for the defense; and to rebut any and all *new matter* introduced by the accused and not touched upon by the prosecution.

2. The accused may cross-examine such new witnesses, called in rebuttal, and may himself call other witnesses to fortify the character of his previous witnesses; but for this purpose only when these have been impeached by the judge-advocate.

Sec. VI. **Examination by the Court.**—The court should, ordinarily, defer questioning a witness until his examination by the judge-advocate and the accused has been completed; if a member, for any reason, as when he sees something material omitted, wishes to put a question before this time, he may suggest it to either the judge-advocate or the accused.

2. The questions of the court should be for the purpose of clearing up doubt upon obscure points, or of reconciling discrepancies in the testimony. With this in view, if the court desires to hear evidence not introduced by either party, it may properly call upon the judge-advocate to procure the same if practicable. Any testimony

[1] I Greenleaf, sec. 467.

thus introduced would, of course, be subject to cross-examination and rebuttal by the party to whom it is adverse.

3. Though the above is the proper order and sequence of examination, the court may, in the interests of truth and justice, call or recall witnesses at any stage of the proceedings, both parties being present; it may permit material testimony to be introduced by either party, quite out of its regular order and place; or permit a case, once closed by either or both sides, to be reopened for the introduction of testimony, previously omitted, even though this may have been done through negligence, if convinced that this testimony is so material that its omission would leave the investigation incomplete.

CREDIBILITY OF WITNESSES.

1. A witness' credibility may be attacked: 1st, by disproving his testimony; 2d, by evidence impeaching his general reputation for truth—particular instances of untruthfulness not being proper subjects of inquiry; 3d, by proof of statements out of court, contradictory to his testimony. This is not permitted unless, if the statement was oral, he was asked on cross-examination whether, at a time and place specified, he had not made such a statement to a person named, or, if the statement was in writing, without showing him the writing or proving its loss.

2. A party can not discredit his own witness; but if he is imposed upon, or the witness unexpectedly testifies adversely, he may contradict him by others.[1]

3. Unless the accused calls witnesses as to his own character, this can not be attacked by the prosecution. The accused having put his character in issue, the prosecution may impeach it.

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[1] I Greenleaf, secs. 442-444.

PROOF OF INTENT.

1. "Where an act, *in itself indifferent*, becomes criminal if done with a particular intent, then the intent must be proved and found; but where the act is *in itself unlawful*, the proof of justification or excuse lies on the defendant; and in failure thereof, the law implies a criminal intent."[1]

REMARKS ON EVIDENCE.

1. Courts-martial, in the absence of any specific statutory rules, are in general governed by the rules of evidence to be found in the common law.

2. The best evidence obtainable should, of course, always be submitted. The *weight* of evidence, however, does not, necessarily, depend upon the *number* of witnesses. A single witness, whose statements, manner, and appearance on the stand are such as to commend him to credit and confidence, will sometimes properly outweigh several less acceptable and satisfactory witnesses.

3. Hearsay evidence is inadmissible; but the court should be careful not to confound *original* with *hearsay*. Thus the fact in controversy may be whether such things were written or spoken, and not whether they are true, or such language or statement may be a necessary or an inseparable concomitant of the fact in issue. In such cases the writings or words are not *hearsay*, but *original* facts admissible as evidence.[2]

4. "The proceedings of a court of inquiry may be admitted as evidence by a court-martial, in cases not capital, nor extending to the dismissal of an officer: *Provided*, That the circumstances are such that oral testimony can not be obtained."[3]

5. Affidavits taken *ex parte*, and not as depositions under article 91, are in no case admissible as evidence on a trial by court-martial, if objected to.

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[1] III Greenleaf, sec. 13.
[2] I Greenleaf, sec. 100.
[3] 121st A. W.

6. Documentary evidence is only admissible when its authenticity has been established by sworn testimony, or by the seal of a court of record, or when its authenticity is admitted by the accused.

7. When transcripts from the records of any of the Executive Departments of the Government are used, they should be authenticated under the seals of such Departments.[1]

8. When a document contains primary evidence of a fact, oral testimony of its contents is inadmissible, unless the nonproduction of the document can be satisfactorily explained.

9. When original documents are introduced and they are of such character that they can not be retained, certified copies will be appended to the record.

FINDING.

1 The finding of the court will be governed by the evidence considered in connection with the plea. The finding upon the charge should be consistent with that upon the specification.

2. The accused may be found guilty of parts of the specification, not guilty of the remainder, and then, if the specification still supports the charge, guilty of the charge.

3. If the evidence proves the commission of an offense less in degree than that specified, yet kindred to it, the court may except words of the specification, substitute others instead, pronounce the guilt and innocence of the substituted and excepted words, respectively, and then find the accused not guilty of the charge, but guilty of the lesser kindred offense. Of this form of verdict, the most familiar is the finding of guilty of absence without leave under a charge of desertion. In such a case, in its

[1] Sec. 882, R. S.

finding of guilty upon the specification, the court should in terms *except* the words "did desert," and substitute therefor the words "did absent himself without authority." The finding upon the charge should regularly be "not guilty, but guilty of absence without leave."[1]

4. Another legal and now common form of finding is where an accused is charged with a *specific* offense, made punishable by an Article of War, other than the 62d, and the court is of the opinion that, while the material allegations in the specification are proved, they do not fully sustain the charge as laid, but do clearly establish a breach of military discipline; in this case the accused may properly be found guilty of the specification and not guilty of the charge, but guilty of "*conduct to the prejudice of good order and military discipline.*" It should be remembered, however, that the court can not in its finding legally substitute the 62d Article of War for any other, unless the proof under the specification fails to substantiate the original charge. The *reverse* of this form of finding has never been sanctioned. Thus where a charge is laid under the general article, a finding under any other article, or, where a charge is laid under a specific article, a finding under any other specific article, would be wholly irregular.

5. In a case of virtual acquittal, to use the term "guilty" is improper; the correct expression is, "Find the facts as charged, but attach no criminality thereto." "Guilty" should be employed only when the accused has been convicted of a crime deserving punishment.

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[1] It is beyond the power of a reviewing officer to change a finding by his own action. Thus where, in a case of desertion, the reviewing authority approved "so much only of the finding of guilty of desertion as convicted the accused of absence without leave," it was held that he thus substituted a finding of his own for that of the court, and that his action was unauthorized.

PREVIOUS CONVICTIONS.[1]

1. "In every case where evidence of previous convictions is admissible,[2] and the accused is convicted of the offense, the court, after determining its findings and before awarding sentence, will be opened for the purpose of ascertaining whether there be such evidence; and if so, of hearing it."[3]

2. Previous convictions by courts-martial other than the summary court are proved by the records of the trials or by duly authenticated orders promulgating them.[4] The proper evidence of previous convictions by summary court is the copy of a summary court record furnished to company and other commanders, as required by paragraph 932, Army Regulations, or one furnished for the purpose, and certified to be a true copy by the post commander or adjutant.[5]

3. The previous convictions are not limited to those for offenses similar to the one for which the accused is on trial. The object is "to see if the prisoner is an old offender, and therefore less entitled to leniency than if on trial for his first offense." This information might not be fully obtained if evidence of previous convictions of similar offenses only were laid before the court. It has no bearing upon the question of guilt of the particular charge on trial, but only upon the amount and kind of punishment to be awarded,[6] and to this end it is proper

[1] By "previous conviction" is meant a conviction where the sentence has been approved by competent authority. This refers to all trials except where the post commander sits as a summary court, when no approval of the sentence is required by law. For instructions as to when evidence of previous convictions must be submitted with charges, see page 19, note 1, *supra*, and for instructions to summary courts regarding previous convictions, see page 78, *infra*.

[2] See page 59, section 1, *infra*.

[3] Par. 929, A. R.; see also page 60, sec. 2, *infra*.

[4] The introduction of evidence of convictions by civil courts is not authorized.

[5] Par. 929, A. R.

[6] For effect on amount of punishment, see page 59, section 1, *infra*.

that all previous convictions should be known. As the accused is not on trial for the offenses, evidence of the previous convictions of which it is proposed to introduce, the 103d Article of War can not be held to apply.[1]

PUNISHMENT.

1. **Punishment**, under the Articles of War, is either fixed or is left to the discretion of a court-martial. If the punishment is prescribed in the article violated, any other punishment than that prescribed is illegal. Before pronouncing sentence, the court should, therefore, in case of any uncertainty, examine the article violated to see what punishment may be legally awarded, and in awarding punishment it should be remembered that the proper amount of punishment is the least by which discipline can be efficiently maintained.

2. *For officers*, the legal punishments by courts-martial, depending on the nature of the offense, are, death, dismissal, suspension from rank, command, or duty, with or without loss of pay or part of pay, loss of relative rank or files, imprisonment, fine or forfeiture of pay, and reprimand.

3. *For soldiers*, the legal punishments, depending on the character of the offense and the jurisdiction of the court, are, death, confinement, confinement on bread-and-water diet, solitary confinement, hard labor, ball and chain, forfeiture of pay and allowances, forfeiture of retained pay,[2] dishonorable discharge from service,[3] and reprimand; for noncommissioned officers, reduction to the ranks also;[4] and for "candidates for promotion," deprivation of all rights and privileges arising from a certificate of eligibility.[5]

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[1] This rule is not changed by the order of the President prescribing the limit of punishment.

[2] See page 51, par. 12, and page 78, par. 16, *infra*.

[3] A dishonorable discharge is an entire expulsion from the Army, and covers all unexpired enlistments.

[4] In regard to sergeants of the post noncommissioned staff and hospital stewards, see pages 62 and 63, *infra*.

[5] Act of July 30, 1892; see G. O. 79 A. G. O., 1892.

4. "No person in the military service shall be punished by flogging, or by branding, marking, or tattooing on the body." [1]

5. Military prisoners will not be punished by being required to carry a heavy log. Some other punishment can be found equally effective and not open to the objections urged against this method.

6. Punishment by ball and chain will be imposed only in extreme cases.[2]

7. "Sentences imposing tours of guard duty are forbidden." [3]

8. Solitary confinement, or confinement on bread-and-water diet, shall not exceed fourteen days at a time, nor be again enforced until a period of fourteen days has elapsed. Nor shall such confinement exceed eighty-four days in any one year.[4]

9. A court-martial may direct a forfeiture only in favor of the United States. A company fund has not been recognized by law as public money, and the pay of a soldier can not be stopped to reimburse the same for losses.

10. A court-martial can not assign the pay of a soldier to any other person; nor can a soldier be required to receipt for money paid without his consent.

11. A general court-martial before which an enlisted man is being tried is charged with a knowledge of the time of expiration of his term of enlistment, and a sentence imposing imprisonment for a period in effect extending to or beyond the expiration of his term of enlistment is held to be an express sentence of confinement until or beyond the expiration of such term.

12. When a general court-martial awards a sentence forfeiting a soldier's pay for several months without expressly including retained pay, it will be held that the soldier's retained pay for those months is not forfeited.

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[1] 98th A. W.

[2] See page 70, par. 3, *infra*.

[3] Par. 939, A. R.

[4] See page 62, *infra*.

13. "If a soldier be brought to trial under a charge of desertion and acquitted, or convicted of absence without leave only, or if the sentence be disapproved by proper authority, any amount paid as a reward for his arrest will not be stopped against his pay unless, in case of conviction of absence without leave, the sentence of the court shall so direct."[1]

14. "No person in the military service shall, under the sentence of a court-martial, be punished by confinement in a penitentiary, unless the offense of which he may be convicted would, by some statute of the United States, or by some statute of the State, Territory, or District in which such offense may be committed, or by the common law, as the same exists in such State, Territory, or District, subject such convict to such punishment."[2]

15. The 97th Article of War only limits the discretion of the court as "to imprisonment in the penitentiary, and it has been nowhere provided that the punishment may not in other respects be greater than the civil courts could inflict."[3] Notwithstanding this, a court-martial should properly consult the statute governing the civil courts, in order to determine a reasonable measure of punishment for the offense.

16. The most common offenses punishable by confinement in a penitentiary are, those mentioned in Article 60, and robbery, grand larceny, embezzlement, forgery, burglary, arson, mayhem, manslaughter, assault with intent to kill, rape, or assault with intent to commit rape. Any of these offenses, when committed to the prejudice of good order and military discipline, either in time of peace or war, are punishable as stated.

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[1] Par. 127, A. R. This paragraph is not affected by the order of the President prescribing the limit of punishment.

[2] 97th A. W.

[3] Opin. U. S. Supreme Court; see G. O. 61, A. G. O., 1882.

MAXIMUM LIMIT OF PUNISHMENT.

The act of September 27, 1890, provides: "That whenever by any of the Articles of War for the government of the Army the punishment on conviction of any military offense is left to the discretion of the court-martial, the punishment therefor shall not, in time of peace, be in excess of a limit which the President may prescribe." The last order of the President prescribing limits of punishment is as follows:

EXECUTIVE MANSION,
March 20, 1895.

The Executive order, dated February 26, 1891, establishing limits of punishment for enlisted men of the Army, under an act of Congress approved September 27, 1890, and which was published in General Orders, No. 21, 1891, Headquarters of the Army, is amended so as to prescribe as follows:

ARTICLE I.

In all cases of desertion the sentence may include dishonorable discharge and forfeiture of pay and allowances.

Subject to the modifications authorized in section 3 of this article the limit of the term of confinement (at hard labor) for desertion shall be as follows:

SECTION 1. In case of surrender—[1]

(*a*) When the deserter surrenders himself after an absence of not more than thirty days, one year.

[1] By the *surrender* of a deserter, as the word is used in the above order, is meant a surrender in good faith. A surrender in order to share in the reward paid for apprehension, or because apprehension can not be avoided, or for any fraudulent purpose, is not to be treated as a "surrender" within the meaning of the order. For action to be taken by post commander in case of surrender or apprehension of a deserter see par. 120, A. R., and for meaning of "deserter's release," see circular 5, A. G. O., 1894.

(*b*) When the surrender is made after an absence of more than thirty days, eighteen months.

SEC. 2. In case of apprehension—

(*a*) When at the time of desertion the deserter shall not have been more than six months in the service,[1] eighteen months.

(*b*) When he shall have been more than six months in the service, two and one-half years.

SEC. 3. The foregoing limitations are subject to modification under the following conditions:

(*a*) The punishment of a deserter may be increased by one year of confinement at hard labor in consideration of each previous conviction of desertion.

(*b*) The punishment for desertion when joined in by two or more soldiers in the execution of a conspiracy, or for desertion in the presence of an outbreak of Indians, or of any unlawful assemblage which the troops may be opposing, shall not exceed dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for five years.

ARTICLE II.

Except as herein otherwise indicated punishments shall not exceed the limits prescribed in the following table:

Offenses.	Limits of punishment.
UNDER 17TH ARTICLE OF WAR.	
Selling horse or arms, or both..	Dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for three years.
Selling accoutrements.....	Four months' confinement at hard labor and forfeiture of $10 per month for the same period; for non-commissioned officer, reduction in addition thereto.
Selling clothing.....	Two months' confinement at hard labor and forfeiture of $10 per month for the same period; for non-commissioned officer, reduction in addition thereto.

[1] The expression "in the service" has reference not only to the soldier's present enlistment, but also to all previous enlistments—in other words, to the aggregate of his service.

Offenses.	Limits of punishment.
UNDER 17TH ARTICLE OF WAR—Continued.	
Losing or spoiling horse or arms through neglect.	Four months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
Losing or spoiling accoutrements or clothing through neglect.	One month's confinement at hard labor and forfeiture of $10; for noncommissioned officer, reduction in addition thereto.
UNDER 20TH ARTICLE OF WAR.	
Behaving himself with disrespect to his commanding officer.	Six months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
UNDER 24TH ARTICLE OF WAR.	
Refusing to obey or using violence to officer or noncommissioned officer while quelling quarrels or disorders.	Dishonorable discharge, with forfeiture of all pay and allowances and confinement at hard labor for two years.
UNDER 31ST ARTICLE OF WAR.	
Lying out of quarters.....	Forfeiture of $2; corporal, $3; sergeant, $4.
UNDER 32D ARTICLE OF WAR.	
Absence without leave—[1]	
Less than one hour.....	Forfeiture of $1; corporal, $2; sergeant, $3; 1st sergeant or noncommissioned officer of higher grade, $4.
From one to six hours [2].....	Forfeiture of $2; corporal, $3; sergeant, $4; 1st sergeant or noncommissioned officer of higher grade, $5.
From six to twelve hours..	Forfeiture of $3; corporal, $4; sergeant, $6; 1st sergeant or noncommissioned officer of higher grade, $7.
From twelve to twenty-four hours.	Forfeiture of $5; corporal, $6; sergeant, $7; 1st sergeant or noncommissioned officer of higher grade, $10.

[1] Upon trial for desertion and conviction of absence without leave only, the court may, in addition to the limit prescribed for such absence, award a stoppage of the amount paid for apprehension.

[2] Including first and excluding last.

Offenses.	Limits of punishment.
UNDER 32D ARTICLE OF WAR—Continued.	
Absence without leave—Cont'd.	
From twenty-four to forty-eight hours.	Forfeiture of $6 and five days' confinement at hard labor. For corporal, forfeiture of $8; sergeant, $10; 1st sergeant or noncommissioned officer of higher grade, $12, or, for all noncommissioned officers, reduction.
From two to ten days.....	Forfeiture of $10 and ten days' confinement at hard labor; for noncommissioned officer, reduction in addition thereto.
From ten to thirty days...	Forfeiture of $20 and one month's confinement at hard labor; for noncommissioned officer, reduction in addition thereto.
From thirty to ninety days.	Three months' confinement at hard labor and forfeiture of $10 per month for same period; for noncommissioned officer, reduction in addition thereto.
For ninety or more than ninety days.	Dishonorable discharge and forfeiture of all pay and allowances and six months' confinement at hard labor.
UNDER 33D ARTICLE OF WAR.	
Failure to repair at the time fixed, &c., to the place of parade—	
For reveille or retreat roll call and 11 p. m. inspection.	Forfeiture of $1; corporal, $2; sergeant, $3; 1st sergeant, $4.
For guard detail.....	Forfeiture of $5; corporal, $8; sergeant, $10.
For fatigue detail.....	Forfeiture of $2; corporal, $3; sergeant, $5.
For dress parade.....	
For the weekly inspection..	
For target practice.....	
For drill.....	
For guard mounting (by musician).	
For stable duty.....	
UNDER 38TH ARTICLE OF WAR.	
Drunkenness—	
On guard	Six months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
On duty as company cook..	Forfeiture of $20.

Offenses.	Limits of punishment.
UNDER 38TH ARTICLE OF WAR—Continued.	
Drunkenness—Continued.	
On extra or special duty.	Forfeiture of $12; for noncommissioned officer, reduction and forfeiture of $20.
At drill	
At target practice	
At parade	
At inspection	
At inspection of company guard detail.	
At stable duty	
UNDER 40TH ARTICLE OF WAR.	
Quitting guard	Six months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
UNDER 51ST ARTICLE OF WAR.	
Persuading soldiers to desert	Dishonorable discharge, forfeiture of all pay and allowances, and one years' confinement at hard labor.
UNDER 60TH ARTICLE OF WAR.	Dishonorable discharge, forfeiture of all pay and allowances, and four years' confinement at hard labor.
UNDER 62D ARTICLE OF WAR.	
Manslaughter	Dishonorable discharge, forfeiture of all pay and allowances, and ten years' confinement at hard labor.
Assault, with intent to kill	Dishonorable discharge, forfeiture of all pay and allowances, and ten years' confinement at hard labor.
Burglary	Dishonorable discharge, forfeiture of all pay and allowances, and five years' confinement at hard labor.
Forgery	Dishonorable discharge forfeiture of all pay and allowances and four years' confinement at hard labor.
Perjury	Dishonorable discharge, forfeiture of all pay and allowances, and four years' confinement at hard labor.
False swearing	Dishonorable discharge, forfeiture of all pay and allowances, and two years' confinement at hard labor.
Robbery	Dishonorable discharge, forfeiture of all pay and allowances, and six years' confinement at hard labor.
Larceny or embezzlement of property—[1]	
Of the value of more than $100.	Dishonorable discharge, forfeiture of all pay and allowances, and four years' confinement at hard labor.

[1] In specifications to charges of larceny or embezzlement the value of the property shall be stated.

Offenses.	Limits of punishment.
UNDER 62D ARTICLE OF WAR—Continued.	
Larceny or embezzlement of property—Continued.	
Of the value of $100 or less and more than $50.	Dishonorable discharge, forfeiture of all pay and allowances, and three years' confinement at hard labor.
Of the value of $50 or less and more than $20.	Dishonorable discharge, forfeiture of all pay and allowances, and two years' confinement at hard labor.
Of the value of $20 or less..	Dishonorable discharge, forfeiture of all pay and allowances, and one year's confinement at hard labor.
Fraudulent enlistment, procured by false representation or concealment of a fact in regard to a prior enlistment or discharge, or in regard to conviction of a civil or military crime.	Dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for one year.
Fraudulent enlistment, other cases of.	Dishonorable discharge forfeiture of all pay and allowances, and confinement at hard labor for six months.
Disobedience of orders, involving willful defiance of the authority of a noncommissioned officer in the execution of his office.	Six months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
Using threatening or insulting language or behaving in an insubordinate manner to a noncommissioned officer while in the execution of his office.	One month's confinement at hard labor and forfeiture of $10; for noncommissioned officer, reduction in addition thereto.
Absence from fatigue duty.....	Forfeiture of $4; corporal, $5; sergeant, $6.
Absence from extra or special duty.	Forfeiture of $4; corporal, $5; sergeant, $6.
Absence from duty as company or hospital cook.	Forfeiture of $10.
Introducing liquor into post or camp in violation of standing orders.	Forfeiture of $3; for noncommissioned officer, reduction and forfeiture of $5.
Drunkenness at post or in quarters.	Forfeiture of $3; for noncommissioned officer, reduction and forfeiture of $5.
Drunkenness and disorderly conduct, causing the offender's arrest and conviction by civil authorities at a place within ten miles of his station.	Forfeiture of $10 and seven days' confinement at hard labor; for noncommissioned officer, reduction and forfeiture of $12.
Noisy or disorderly conduct in quarters.	Forfeiture of $4; corporal, $7; sergeant, $10.
Abuse by noncommissioned officer of his authority over an inferior.	Reduction, three months' confinement at hard labor, and forfeiture of $10 per month for the same period.

Offenses.	Limits of punishment.
UNDER 62D ARTICLE OF WAR—Continued.	
Noncommissioned officer encouraging gambling.	Reduction and forfeiture of $5.
Noncommissioned officer making false report.	Reduction, forfeiture of $8, and ten days' confinement at hard labor.
Sentinel allowing a prisoner under his charge to escape through neglect.	Six months' confinement at hard labor and forfeiture of $10 per month for the same period.
Sentinel willfully suffering prisoner under his charge to escape.	Dishonorable discharge, forfeiture of all pay and allowances, and one year's confinement at hard labor.
Sentenel allowing a prisoner under his charge to obtain liquor.	Two months' confinement at hard labor and forfeiture of $10 per month for the same period.
Sentinel or member of guard drinking liquor with prisoners.	Two months' confinement at hard labor and forfeiture of $10 per month for the same period.
Disrespect or affront to a sentinel.	Two months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
Resisting or disobeying sentinel in lawful execution of his duty.	Six months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
Lewd or indecent exposure of person.	Three months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.

ARTICLE III.

SECTION 1. When a soldier shall be convicted of an offense the punishment for which, as authorized by Article II of this order or the custom of the service, does not exceed that which an inferior court-martial may award, the punishment so authorized may be increased by one-half for every previous conviction of one or more offenses within eighteen months preceding the trial and during the current enlistment;[1] provided that the increase of punishment for five or more previous convictions shall

[1] When the limit of punishment thus prescribed exceeds that which an inferior court can award, the case will be referred to a general court-martial.

not exceed that thus authorized when there are four previous convictions, and that when one or more of such five or more previous convictions shall have been by general court-martial, or when such convictions shall have occurred within one year preceding the trial, the limit of punishment shall be dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for three months.[1]

When the conviction is of an offense, punishable under Article II of this order or the custom of the service with a greater punishment than an inferior court-martial can award, but not punishable with dishonorable discharge, the sentence may, on proof of five or more previous convictions within eighteen months and during the current enlistment, impose dishonorable discharge and forfeiture of all pay and allowances in addition to the authorized confinement, and when this confinement is less than three months it may be increased to three months.

When a noncommissioned officer is convicted of an offense not punishable with reduction, he may, if he shall have been convicted of a military offense within a year and during the current enlistment, be sentenced to reduction, in addition to the punishment already authorized.

SEC. 2. In every case when an offense on trial before a court-martial is of a character admitting of the introduction of evidence of previous convictions, and the accused is convicted, the court, after determining its findings, will be opened for the purpose of ascertaining

[1] Par. 1, circular 12, A. G. O., 1892, explanatory of the first order of the President prescribing the maximum limit of punishment, is not applicable to this paragraph of this order of the President amending the first order. This paragraph now creates two specific classes of cases, viz: 1. When one or more of five previous convictions within eighteen months shall have been by general court-martial. 2. When five or more convictions by inferior courts shall have occurred within one year preceding the trial. In either case the limit of punishment is made dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for three months. This being the maximum punishment, it may be reduced by a court in accordance with the circumstances of a particular case.

whether there is such evidence, and, if so, of hearing it. These convictions must be proved by the records of previous trials, or by duly authenticated orders promulgating the same, except in the cases of conviction by summary court, when a duly authenticated copy of the record of said court shall be deemed sufficient proof.[1] Charges forwarded to the authority ordering a general court-martial, or submitted to a summary, garrison, or regimental court, must be accompanied by the proper evidence of such previous convictions as may have to be considered in determining upon a sentence.[2]

ARTICLE IV.

When a soldier shall, on one arraignment, be convicted of two or more offenses, none of which is punishable under Article II of this order or the custom of the service with dishonorable discharge but the aggregate term of confinement for which may exceed six months, dishonorable discharge with forfeiture of pay and allowances may be awarded in addition to the authorized confinement.

ARTICLE V.

This order prescribes the *maximum* limit of punishment for the offenses named, and this limit is intended for those cases in which the severest punishment should be awarded. In other cases the punishment should be graded down according to the extenuating circumstances. Offenses not herein provided for remain punishable as authorized by the Articles of War and the custom of the service.

ARTICLE VI.

Summary courts are subject to the restrictions named in the 83d Article of War.[3] Soldiers against whom charges may be preferred for trial by summary court shall not be

[1] See page 49, *supra*.
[2] Par. 929, A. R.; see, also, page 19, note 1, *supra*.
[3] See page 78, pars. 15 and 16, *infra*.

confined in the guardhouse, but shall be placed in arrest in quarters, before and during trial and while awaiting sentence, except when in particular cases restraint may be necessary.[1]

ARTICLE VII.

The following substitutions for punishments named in Article II of this order are authorized at the discretion of the court:

Two days' confinement at hard labor for one dollar forfeiture; one day's solitary confinement on bread-and-water diet for two days' confinement at hard labor or for one dollar forfeiture;[2] provided that a noncommissioned officer not sentenced to reduction shall not be subject to confinement; *and provided,* That solitary confinement shall not exceed fourteen days at one time, nor be repeated until fourteen days have elapsed, and shall not exceed eighty-four days in one year. Whenever the limit herein prescribed for an offense or offenses may be brought within the punishing power of inferior courts-martial, as defined by the 83d Article of War, by substitution of punishment under the provisions of this article, the said courts have jurisdiction of such offense or offenses.[3]

ARTICLE VIII.

Noncommissioned officers above the rank of corporal shall not, if they object thereto, be brought to trial before regimental, garrison, or summary courts-martial, without the authority of the officer competent to order their trial by general court-martial;[4] nor shall sergeants

[1] Par. 936, A. R.; see, also, page 6, *supra.*

[2] This authorizes only the substitutions of punishment mentioned and does not authorize the reverse of the specified substitutions. Except as to these substitutions courts-martial are restricted to the *kinds* of punishments prescribed for the particular offenses named in above order.

[3] If the limit prescribed exceeds that defined by the 83d A. W., the case will be referred to a general court.

[4] See page 13, Sec. II, *supra*; also, page 76, pars. 5 and 6, *infra.*

of the post noncommissioned staff or hospital stewards be reduced, but they may be dishonorably discharged whenever reduction is included in the limit of punishment.[1]

GROVER CLEVELAND.

SENTENCE.

1. When in any case the punishment is by the Articles of War left to the discretion of the court-martial the court will, before proceeding to award the punishment, ascertain whether a limit has been fixed by the foregoing executive order.[2] Those members desiring to propose a sentence usually write it on a slip of paper and hand it to the president. The president reads the proposed sentences to the court, and the members vote on them in order, beginning with the lightest, until a majority agree upon a sentence. In a case where a punishment is fixed, the members vote upon a sentence awarding this punishment. Upon a death sentence, two-thirds of the members must concur (the record so explicitly stating), and no person can be sentenced to death except in cases expressly mentioned in the Articles of War or in section 1343, Revised Statutes, as thus punishable.[3]

2. "When an officer is dismissed from the service for cowardice or fraud, the sentence shall further direct that the crime, punishment, name, and place of abode of the delinquent shall be published in the newspapers in and about the camp, and in the State from which the offender came, or where he usually resides; and after such publication it shall be scandalous for an officer to associate with him."[4]

3. A general court-martial may sentence a soldier to confinement in a penitentiary for any offense which may be thus punished "by some statute of the United States,

[1] Par. 931, A. R.

[2] "When a sentence of confinement or forfeiture is in excess of the legal limit, the part within the limit is legal and may be executed." (Par. 943, A. R.)

[3] 96th A. W.

[4] 100th A. W.

or by some statute of the State, Territory, or District in which such offense may be committed, or by the common law, as the same exists in such State, Territory, or District."[1] When, therefore, the sentence of such a court-martial prescribes imprisonment, the court will state therein whether the prisoner shall be confined in a penitentiary[2] or at a post, being guided in its determination by the 97th Article of War, from which the foregoing quotation is taken.[3]

4. "When a sentence imposes forfeiture of pay, or of a stated portion thereof, for a certain number of months, it stops for each of those months the amount stated. Thus: 'Ten dollars of monthly pay for one year' would be a stoppage of $120. When the sentence is silent as to the date of commencement of forfeiture of pay, the forfeiture will begin at the date of promulgation of the sentence in orders, and will not apply to pay which accrued previous to that date."[4]

5. "Notwithstanding a sentence contemplates payment of a stated sum to a soldier upon his release from confinement, it can not be made unless there is a sufficient balance to his credit after all authorized stoppages are deducted."[5]

6. "A sentence adjudging a dishonorable discharge, to take effect at such a period during a term of confinement as may be designated by the reviewing authority, is illegal."[6]

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[1] 97th A. W.

[2] Unless the law of the State, Territory, etc., in which the courts is convened, are at hand, it is impossible for the court to determine in all cases whether or not, under the 97th A. W., the offender is punishable by penitentiary confinement. Therefore, in case of any doubt, the words "in such place as the reviewing authority may direct," will be used in the sentence.

[3] Par. 940, A. R.

[4] Ib. 951.

[5] Ib., 953.

[6] Ib., 949.

RECORD OF PROCEEDINGS.

1. Every court-martial will keep an accurate record of its proceedings. The record in each case will be complete in itself, and will contain a copy of the order appointing the court. It will be authenticated by the signatures of the president and judge-advocate, the latter affixing his signature to each day's proceedings.[1] The record must show that the court was organized as the law requires, that the prisoner was asked if he wished to object to any member and his answer to such question, and that the members of the court and the judge-advocate were duly sworn.

2. All orders, modifying the detail of the court and issued after its original organization, must be incorporated in the record. The record should also note the fact of a new member taking his seat, or a new judge-advocate commencing to officiate, according to orders, on a certain day.

3. The entire proceedings will be spread upon the record; all orders and rulings of the court; all motions, propositions, objections, arguments, statements, etc., of the judge-advocate or the accused; the testimony of each witness, as nearly as possible in his own language; in short, every feature of the proceedings material to a complete history of the case and to a correct understanding of every point of the same by the reviewing authority will be recorded at length.

4. Although, since the passage of the act of Congress of July 27, 1892, "to amend the Articles of War, etc.," it is desirable that the record of a court-martial should show that when it sat in closed session the judge-advocate withdrew, it will not vitiate the proceedings if this is not expressly stated. When the record shows that the court was closed, the presumption is that it was closed in accordance with the requirements of law.[2]

[1] Par. 954 A. R. The record of each day's proceedings will, if practicable, be completed in time to be submitted to the court at its next session for approval or correction. See, also, page 125, note 4, *infra*.

[2] For form for closing and reopening court, see page 122, *infra*.

5. The "statement of service" referred to on page 19, paragraph 4, *supra*, will not be introduced in evidence nor made a part of the record of the trial, but will be returned to the convening authority with the record.[1]

6. A recommendation to clemency will not be embraced in the body of the sentence; but will be appended to the record after any exhibits referred to in the proceedings. Only those members who concur in a recommendation should sign it.

REVISION OF RECORD.[2]

1. "When the record of a court exhibits error in preparation, or seemingly erroneous conclusions, the reviewing authority may reconvene the court for a reconsideration of its action, pointing out defects. Should the court concur in the views submitted, it will proceed by amendment to correct its errors, and may modify or completely change its findings. A reopening of the case, by calling or recalling witnesses, is illegal."[3]

2. An amendment can only be made by the court when duly reconvened for the purpose, and when made must be the *act of the court as such*. A correction made by the president or other member, or by the judge-advocate, independently of the court, and by means of an erasure or otherwise, is unauthorized. If omissions in the record are to be supplied, the page and line on which they occur will be stated and the corrections given in full. The original record will not be interlined nor altered in any way.

REVIEWING AUTHORITY.

1. "No sentence of a court-martial shall be carried into execution until the same shall have been approved by the officer ordering the court, or by the officer commanding for the time being."[4]

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[1] Par. 927, A. R.

[2] For form for revision see page 130, *infra*.

[3] Par. 957, A. R.

[4] 104th A. W.; see G. O. 57, A. G. O., 1892.

2. The officer having authority to confirm the sentence of a court-martial will state at the end of the proceedings in each case his decisions and orders.[1]

3. All sentences of courts-martial may be confirmed and carried into execution by the officer ordering the court, or by the officer commanding for the time being, where confirmation by the President, or by the commanding general in the field, or the commander of the department, is not required by the Articles of War.[2] In time of peace, sentences directing the dismissal of an officer or inflicting the punishment of death require confirmation by the President.[3] Proceedings involving either dismissal or death will therefore (except in time of war, in cases mentioned in the 105th and 107th Articles of War) be forwarded by the convening authority direct to the Judge-Advocate-General for the action of the President.

4. A military commander can not delegate to an inferior or other officer his function as reviewing authority as conferred by the 104th and 109th Articles of War. Nor can he authorize a staff or other officer to subscribe for him his decision and orders on the proceedings.

5. Every officer authorized to order a court-martial has power to pardon or mitigate any punishment adjudged by it,[4] except that of death,[5] or the dismissal of an officer.[6]

6. "The power to pardon or mitigate punishment imposed by a court-martial, vested in the authority which confirms the proceedings, extends only to unexecuted portions of a sentence, and continues only while the prisoner remains under the jurisdiction of that authority; the fact that a soldier has been dishonorably discharged through his sentence does not affect this power. An application for clemency in case of a general prisoner sentenced to confinement in a penitentiary will be forwarded to the Secretary of War for the action of the President."[7]

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[1] Par. 955, A. R.
[2] 109th A. W.
[3] 105th, 106th, and 108th A. W.
[4] 112th A. W.
[5] 105th A. W.
[6] 106th A. W.
[7] Par. 916, A. R.

7. "Any officer who has authority to carry into execution the sentence of death, or of dismissal of an officer, may suspend the same until the pleasure of the President shall be known; and, in such case, he shall immediately transmit to the President a copy of the order of suspension, together with a copy of the proceedings of the court."[1]

8. While a reviewing authority may remit or mitigate a sentence, he can not change it so as to impose a punishment of a different nature; thus, he can not change a sentence of dishonorable discharge awarded an enlisted man to confinement at hard labor.[2]

9. "The authority which has designated the place of confinement, or higher authority, may change the place of confinement of any prisoner under the jurisdiction of such authority;"[3] but "when the court has sentenced a prisoner to confinement at a post, no power is competent to increase the punishment by designating a penitentiary as the place of confinement."[4]

10. When general courts-martial have properly sentenced soldiers to confinement in a penitentiary,[5] "department commanders will designate the United States Penitentiary at Fort Leavenworth, Kansas, as the place of execution of such sentences, in cases in which the term of confinement imposed is more than one year. If any State or Territory within a military department has made provision by law for the confinement of such prisoners in its penitentiaries, the department commander, with the approval of the Secretary of War, may designate one as the place of execution of sentence."[6]

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[1] 111th A. W.

[2] As to authority of reviewing officer to change finding, see page 48, note 1, *supra*.

[3] Par. 946, A. R.

[4] Ib. 942. A punishment of confinement in a penitentiary, when legal, may be mitigated to confinement at a military post.

[5] See page 52, par. 14, *supra*.

[6] Par. 941, A. R.

11. "When a sentence of confinement or forfeiture is in excess of the legal limit, the part within the limit is legal and may be executed."[1]

12. "The time at which a dishonorable discharge is to take effect, as fixed by a sentence, can not be postponed by the reviewing officer."[2]

13. "A sentence to confinement, with or without forfeiture of pay, can not become operative prior to the date of confirmation. If it be proper to take into consideration the length of confinement to which the prisoner has been subjected previous to such confirmation, it may be done by mitigation of sentence."[3]

14. "An order remitting a forfeiture of pay operates only on the pay to become due subsequent to the date of the order."[4]

15. "The order promulgating the proceedings of a court and the action of the reviewing authority will, when practicable, be of the same date. When this is not practicable, the order will give the date of the action of the reviewing authority as the date of the beginning of the sentence. This does not apply to sentences of forfeiture of all pay and allowances. A soldier awaiting result of trial will not be paid before the result is known."[5]

16. Proceedings of general courts-martial in cases of officers and in important cases of enlisted men will be published in general orders. Unimportant cases of enlisted men will be published in special orders.[6]

CONFINEMENT AFTER TRIAL.

1. "Enlisted men serving sentences of confinement, not involving dishonorable discharge, will be designated 'garrison prisoners;' those sentenced to dishonorable discharge, 'general prisoners.'"[7]

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[1] Par. 943, A. R.
[2] Ib. 950.
[3] Ib. 947.
[4] Ib. 952.
[5] Ib. 945.
[6] For form for special order, see page 146, *infra*.
[7] Par. 903, A. R.

2. Prisoners undergoing sentence of general court-martial, and those confined for serious offenses will, if practicable, be kept apart from those confined by sentence of an inferior court, or for minor offenses. General prisoners will not be confined with other prisoners except in case of necessity.[1]

3. "Prisoners will not be placed in irons except under sentence of court-martial, or in the extraordinary case of a prisoner who, in the judgment of the commanding officer, is a desperate or dangerous character, and in each such case report of action and the circumstances will be immediately made to the department commander. A prisoner may be shackled or handcuffed while being transported from one post to another, or from a post to a penitentiary when, in the judgment of the officer in charge, the escape of the prisoner can not otherwise be prevented."[2]

4. "Prisoners will be forwarded from places where tried to posts at which they are sentenced to serve confinement only on orders of department commanders or higher authority. The strength of guards to accompany them will be limited to the necessities of safe delivery. The commanding officer of a post from which a prisoner is transferred will send under seal to the commanding officer of the post where the sentence of confinement is to be executed the following papers in his case, viz: Discharge papers, if discharged, descriptive list, orders promulgating and modifying sentences, statement of conduct while under sentence to date of transfer, and a list of clothing in possession of the prisoner when forwarded."[3]

5. "All serviceable clothing which belongs to a prisoner, and his blankets, will accompany him to the post designated for his confinement, and will be fully itemized on the clothing list mentioned in the preceding paragraph.

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[1] Par. 907, A. R. For special rules relating to prisoners, see G. O. 55, A. G. O., 1895.

[2] Par. 909, A. R.

[3] Ib. 911.

The guard in charge of the prisoner during transfer will be furnished with a duplicate of this list and will be held responsible for the delivery of all articles itemized therein, with the prisoner. At least one serviceable woolen blanket will be sent with every such prisoner so transferred."[1]

6. "The personal effects of military prisoners who have escaped from confinement, except such as possess some special value as keepsakes, may be disposed of by sale as in the case of effects of deceased soldiers, and the proceeds thereof, together with any money left by the prisoner in the hands of the company commander, be turned over to a paymaster, who should account for the same in the manner provided for paymasters' collections. The officer will take the paymaster's receipt for the amount paid him and forward the same to the Auditor for the War Department."[2]

7. "Prisoners will be allowed in abatement of their terms of confinement five days for each period of twenty-five days during the whole of which their conduct has been good; but abatements thus earned may be forfeited, either in whole or in part, by subsequent misconduct. Such forfeitures are determined by the commanding officer of the post where a prisoner is confined."[3]

8. "When the date for the commencement of a term of confinement imposed by sentence of a court-martial is not expressly fixed by the sentence, the term of confinement begins on the date of the order promulgating it. The sentence is continuous until the term expires, except when the person sentenced is absent without authority."[4] The word *days*, in a sentence of confinement, means periods of twenty-four hours, counting from guard-mounting on the first day of the sentence.

9. "When soldiers awaiting result of trial or undergoing sentence commit offenses for which they are tried, the second sentence will be executed upon the expiration of the first."[5]

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[1] Par. 912, A. R.
[2] Ib. 913.
[3] Ib. 915.
[4] Ib. 944.
[5] Ib. 948.

10. "A general prisoner, when released from confinement at a post, will be carefully examined and a record of all marks, scars and physical peculiarities made by a medical officer on the outline figure card used in the examination of recruits, which the medical officer will forward direct to the Surgeon-General."[1]

HABEAS CORPUS.

1. "Officers will make respectful returns in writing to all writs of habeas corpus served on them. When the writ is issued by a State authority, and the person held by the army officer is a civilian who has been apprehended under a warrant of attachment to be taken before a court-martial to testify as a witness, the officer will not produce the body, but will, by his return, set forth fully the authority by which he holds the person, and allege that the State authority is without jurisdiction to issue the writ of habeas corpus, and ask to have the same dismissed. He will also exhibit to the court or officer issuing the writ of habeas corpus the warrant of attachment and the subpœna (and the proof of the service of the subpœna) on which the warrant of attachment was based, and also a certified copy of the order convening the court-martial before which he had been commanded to take the person."[2]

2. "Should a writ of habeas corpus issued by a State court or judge be served upon an army officer commanding him to produce an enlisted man or show cause for his detention, the officer will decline to produce in court the body of the person named in the writ, but will make respectful return[3] in writing to the effect that the man is a duly enlisted soldier of the United States, and that the Supreme Court of the United States has decided that a magistrate or court of a State has no jurisdiction in such a case."[4]

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[1] Par. 914, A. R.
[2] Ib. 969.
[3] For form, see page 146, *infra*.
[4] Par. 970, A. R.

3. "A writ of habeas corpus issued by a United States court or judge will be promptly complied with. The person alleged to be illegally restrained of his liberty will be taken before the court from which the writ has issued, and a return[1] made setting forth the reasons for his restraint. The officer upon whom such a writ is served will at once report the fact of such service direct to the Adjutant-General of the Army by telegraph."[2]

DISPOSITION OF RECORDS.

1. The Judge-Advocate-General revises and is the custodian of the records of the proceedings of all general courts-martial.[3] The original records of proceedings, with the decisions and orders of the reviewing authorities made thereon, and also the records of proceedings of all general courts which require confirmation by the President but which have not been appointed by him, will be forwarded direct to the Judge-Advocate-General. One copy of the order promulgating the action of the court, and a copy of every subsequent order affecting the case, will be forwarded to the Judge-Advocate-General, with the record of each case. When more than one case is embraced in a single order, a sufficient number of copies will be forwarded to enable one to be filed with each record. The proceedings of all courts appointed by the President will be sent direct to the Secretary of War.[4]

2 "Applications of officers, enlisted men, and military prisoners for copies of proceedings of general courts-martial, to be furnished them under the 114th article of war, will, when received by post or other commanders, be forwarded direct to the Judge-Advocate-General."[5]

3. "Communications relating to proceedings of military courts on file in the Judge-Advocate-General's department will be addressed and forwarded direct by department commanders to the Judge-Advocate-General. In routine matters, the Judge-Advocate-General and judge-advocates may correspond with each other direct."[6]

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[1] For form see page 148, *infra*.
[2] Par. 971, A. R.
[3] Sec. 1199, R. S.; par. 890, A. R.
[4] Par. 892, A. R.
[5] Ib. 894.
[6] Ib. 895.

4. Judge-advocates of departments are the custodians of the reports of cases tried by summary courts[1] and of all proceedings of garrison or regimental courts-martial.[2]

5. Post and other commanders will, on the last day of each month, make a report to the department headquarters of the number of cases determined by summary court during the month, setting forth the offenses committed and the penalties awarded.[3] They will also forward, without delay, to department headquarters all complete proceedings of garrison or regimental courts-martial.[4]

6. The reports of cases tried by summary courts and records of other inferior courts will be filed in the office of the judge-advocate at the headquarters of the department commander in whose department the courts were held, for two years, at the end of which time they may be destroyed.[5]

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[1] Act of Oct. 1, 1890, establishing the summary court; see page 109' *infra*.

[2] Act of Mar. 3, 1877.

[3] Act of Oct. 1, 1890.

[4] Par. 956, A. R.

[5] Act of Mar. 3, 1877.

INFERIOR COURTS-MARTIAL.

THE SUMMARY COURT.[1]

1. **Composition.**—The summary court is composed of but one officer—the *line* officer second in rank at the post or station, or of the command of the accused. At stations where only staff officers are on duty, the second in rank is the court;[2] and when but one officer is present with a command, he hears and determines such cases as require summary action,[3] except when he is the accuser or the accused requests a trial by court-martial.[4]

2. An officer can not act as court and accuser in the same case. When the second in rank is the accuser, the post commander *must* try the case, unless the accused demands a trial by court-martial. When the post commander is the accuser and the only officer present, the case must necessarily go to a regimental or garrison court-martial.[5] This is not confined to offenses committed in the presence of the post commander.

3. **Constitution.**—No order is necessary for the appointment of a summary court. The officer who acts as the court is constituted such by law for the hearing of cases within the jurisdiction of a summary court, and charges are referred to him for trial accordingly.

4. **Jurisdiction.**—The summary court has jurisdiction only in time of peace.[5]

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[1] Established by act of Oct. 1, 1890; see page 109, *infra*.

[2] Line officers on regimental or post staff duty are not staff officers within the meaning of the summary court act.

[3] This duty is obligatory.

[4] Act of Oct. 1, 1890; see page 109, *infra*.

[5] Ib.

5. *As regards persons*, the summary court can not legally try officers, cadets,[1] or candidates for promotion;[2] nor can noncommissioned officers above the rank of corporal be brought to trial, if they object thereto, before any inferior court-martial, without the authority of the officer competent to order their trial by general court-martial.[3] Over all other enlisted men the court has jurisdiction; but any enlisted man charged with an offense and brought before a summary court may, if he so desires, object to trial by such court and request trial by court-martial, which request must be granted as of right.[4]

6. *As regards offenses*, the summary court has no jurisdiction over those punishable with death, nor over such as are punishable under the order of the President prescribing limits of punishment,[5] or the custom of the service, with a punishment exceeding the power of this court to award, namely, confinement at hard labor and forfeiture of pay for one month.[6]

7. If a summary court, when a case has been referred to it, deems that it has no jurisdiction over either the offense or person, the case will be returned to the commanding officer with a statement of the reasons on which the decision is based. The commanding officer may return the case to the court for reconsideration, giving reasons therefor; but if the summary court still decides that it is without jurisdiction, the case (if it is to be tried) must be referred to a general court.

8. *As regards time of trial*, the jurisdiction of a summary court is not affected by the time when cases are brought before it, the requirement of the law as to time being directory only. The commanding officer, and not the court, will determine when and what cases will be brought before it. Delay in the trial of a soldier does not invalidate the

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[1] Sec. 1326, R. S.

[2] Act of July 30, 1892; see G. O. 79, A. G. O., 1892.

[3] Par. 931, A. R.

[4] Act of Oct. 1, 1890; see page 109, *infra*.

[5] See page 53, *supra*.

[6] See page 62, *supra*.

proceedings, but may be considered by the court in awarding sentence.[1]

9. **Power.**—Summary courts have power to administer oaths;[2] to hear and determine cases; and, when satisfied of the guilt of an accused party, to adjudge the punishment to be inflicted.[3]

10. **Clerk.**—The necessary summary court writing will be done by the clerks in the adjutant's office.

11. **Procedure.**—The accused will be arraigned and allowed to plead, according to court-martial practice. If an accused neither demands a removal of his case to a court-martial, nor (he being a non-commissioned officer above the grade of corporal) objects to being brought before an inferior court, nor pleads guilty, and the summary court officer is not the accuser, witnesses will be sworn and evidence received—the accused being permitted to testify in his own behalf and make a statement; but the evidence and statement will not be recorded.[4]

12. "The summary court, as soon as trial is concluded, will record its findings and sentence[5] in the prescribed record book and submit it to the post commander, who will record therein his approval or disapproval, in part or whole, with date and signature. Should the post commander be the summary court, the findings and sentence will be recorded in like manner.[6] No other record of the

[1] Par. 935, A. R. The provision of the 94th Article of War relating to hours of session of courts-martial is held not applicable to summary courts.

[2] This refers to oaths of witnesses. The trial officer himself is not sworn. The trial officers of summary courts, judge-advocates of courts-martial, and judge-advocates of departments have power to administer oaths for purposes of military justice and for other purposes of military administration. (See act of July 27, 1892.) A summary court is not empowered to issue process of attachment to compel the attendance of a civilian witness.

[3] Act of Oct. 1, 1890; see page 109, *infra*.

[4] Par. 932, A. R.

[5] For forms for sentences, see page 137, *infra*.

[6] See page 131, *infra*; also, page 132, par. 2, *infra*.

proceedings will be kept, and such trials will not be published in orders."[1]

13. **Previous Convictions.**—Charges submitted for trial by a summary court will be accompanied by evidence of all convictions of accused within the previous eighteen months, which evidence will be furnished if practicable by the officer preferring the charges; if the evidence is contained in the summary court record book, a reference to it will be sufficient. If this evidence is not submitted or cited, the summary court may take judicial notice of any such evidence as the record book contains.[2]

14. Whenever, in determining on its sentence, a summary court shall take into consideration previous convictions, a note of the number of such previous convictions will be made on the summary court record.

15. **Limit of Punishing Power.**—Summary courts are subject to the restrictions of the 83d Article of War.[3] Under this article inferior courts-martial may award sentences of confinement at hard labor and forfeiture of pay for one month, and, as necessarily included in this, may sentence noncommissioned officers to be reduced to the ranks. This is the *limit of their punishing power.* For those offenses for which a limit of punishment has been prescribed, a summary court is restricted to the *kinds* of punishment named, except as to the substitution of confinement for forfeiture in the settled ratio given on page 62, *supra.*

16. Under the 83d Article of War an inferior court-martial has power to award a sentence forfeiting a specific amount of money equal to the soldier's pay, including retained pay, for one month; but when the sentence prescribes a forfeiture of pay for one month without specifying a fixed amount, or without expressly including the retained pay, the retained pay is not forfeited.

17. **Record.**—"There shall be a summary court record book or docket kept at each military post, and in the field at the headquarters of the command, in which shall be

[1] Par. 932, A. R.
[2] Ib. 934.
[3] Ib. 936; see, also, page 61, *supra.*

entered a record of all cases heard and determined and the action had thereon."[1]

18. **Reviewing Authority.**—The commanding officers authorized to approve the sentences of summary courts have power to remit or mitigate the same.[2]

19. "When a post commander sits as a summary court, no approval of the sentence is required by law, but he should sign the sentence as post commander and date his signature."[3]

20. **Instructions for Post and Other Commanders, relating to Summary Courts.**—Charges for offenses cognizable by inferior courts will be laid before the post commander, who, if he thinks the accused should be tried, will cause him to be brought before the summary court.[4]

21. "Commanding officers are not required to bring every dereliction of duty before a court for trial, but will endeavor to prevent their recurrence by admonitions, withholding of privileges, and taking such steps as may be necessary to enforce their orders."[5] It is believed that the proper use of this power will make it unnecessary to bring before the summary court many of the trifling delinquencies which are now made the subject of trial; indeed, that such trifling delinquencies will in great measure be prevented. Department commanders will see that their subordinate commanding officers fulfill their duties in this regard.

22. "The summary court will be opened at a stated hour every morning except Sunday,[6] for the trial of such cases as may properly be brought before it. Trials will be had on Sunday only when the exigencies of the service make it necessary."[7]

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[1] Act of Oct. 1, 1890; see page 109, *infra*. For form for record book, see page 131, *infra*.

[2] Act of July 27, 1892; see G. O. 57, A. G. O., 1892.

[3] Par. 933, A. R.

[4] Ib. 932.

[5] Ib. 930.

[6] If it be understood that the court shall not sit on Sunday, the officer charged with the duty of bringing offenders before it will comply with his duty by doing so at the first session of the court thereafter.

[7] Par. 935, A. R.

23. "Post commanders will furnish company and other commanders with copies of the summary court record relating to men of their commands, said copies to be certified to be true copies by the post commander or adjutant."[1]

24. The name of each officer at a post who has acted as a summary court will be reported on the post return, with dates.

THE FIELD OFFICER'S COURT.

1. **Composition.**—The field officer's court is composed of a single officer—a field officer of the regiment to which the accused belongs.[2]

2. **Constitution.**—A field officer's court will be detailed by the brigade commander, or, in case there be no brigade commander, by the commanding officer of the post or camp.

3. **Jurisdiction.**—The jurisdiction of the field officer's court is limited to time of war. Except that this court has jurisdiction only over offenders belonging to the regiment of the field officer of which it is composed, its jurisdiction and punishing power are the same as those of a summary court.

4. **Procedure.**—The procedure of a field officer's court is similar to that of a summary court. The field officer hears and determines cases and usually keeps the record himself. A form of record of a field officer's court is given on page 133, *infra*.

5. **Reviewing Authority.**—No sentence of a field officer's court can be executed until the same has been approved by the brigade commander, or, in case there be no brigade commander, by the commanding officer of the post or camp.[3] When, therefore, a regiment, in time of war, is a part of neither a brigade nor a post or camp command, a regimental or a garrison court-martial will be resorted to.

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[1] Par. 932, A. R.

[2] 80th A. W.

[3] 110th A. W., as amended by the act of July 27, 1892; see page 104 *infra*.

6. The *power* of the reviewing authority of a field officer's court is restricted to *approval* or *disapproval* of the sentence.[1]

THE GARRISON COURT-MARTIAL.

1. **Composition.**—A garrison court-martial is composed of three members[2] and a judge-advocate. The remarks regarding the eligibility of officers for court-martial duty on page 9, paragraphs 1–3, *supra*, apply to garrison courts.

2. **Constitution.**—Every officer commanding a garrison, fort, or other place where the troops consist of different corps may appoint garrison courts.[3] The term "other place" includes any locality whatever where the command may be, whether in garrison or in the field. To fulfill the requirement regarding "different corps," it is sufficient if there be on duty in the command a *single* officer or soldier of another arm of service than that of which the main body is composed.

3. **Jurisdiction, etc.**—*In time of peace*, a garrison court-martial has jurisdiction upon request of the accused, when brought before a summary court,[4] or when the officer acting as summary court is the accuser and the only officer present with the command. The only other case when a garrison court-martial can be convened in time of peace is when the composition of the command is such that the summary court act does not apply. Whenever, under any of these circumstances, it becomes necessary to convene a garrison court-martial, the order appointing it will state the fact which brings the case within the exceptions of the law.[5]

4. *In time of war*, the garrison court-martial has jurisdiction only when the field officer's court has not, or when no field officer can be detailed.

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[1] See 110th and 112th A. W.

[2] 82d A. W.

[3] Ib.

[4] Act of Oct. 1, 1890; see page 109, *infra*.

[5] Par. 937, A. R. For form for order and record, see page 134, *infra*.

5. What has been said of the jurisdiction of *summary courts* as regards persons, offenses and the "*limit of punishing power*" applies equally to garrison courts-martial. In other respects the general remarks heretofore made regarding the president, members, judge-advocate, organization, order of procedure, etc., of courts-martial apply to garrison courts, except when the general court is specially mentioned.

THE REGIMENTAL COURT-MARTIAL.[1]

1. **Composition.**—The regimental, like the garrison court-martial, is composed of three members and a judge-advocate; but in case of the regimental court only officers of the offender's regiment or corps are eligible for detail on the court.[2]

2. **Constitution.**—Every officer commanding a regiment or corps may appoint a regimental court-martial.[3] The word "Corps" includes the Corps of Engineers, the Ordnance and the Signal Corps.

3. **Jurisdiction.**—With the exception that the regimental court-martial has jurisdiction only over offenders belonging to the regiment or corps from which the court is composed, what has been said of the jurisdiction, punishing power, and procedure of garrison courts applies equally to regimental courts.[4]

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[1] See page 89, note 1, *infra*.

[2] 81st A. W.

[3] Ib.

[4] Regarding order for regimental court, see par. 937 A. R., and for form for record, see page 136, *infra*.

ARTICLES OF WAR.

SECTION 1342, R. S. The armies of the United States shall be governed by the following rules and articles. The word officer, as used therein, shall be understood to designate commissioned officers; the word soldier shall be understood to include noncommissioned officers, musicians, artificers, and privates, and other enlisted men, and the convictions mentioned therein shall be understood to be convictions by court-martial.

ARTICLE 1. Every officer now in the Army of the United States shall, within six months from the passing of this act, and every officer hereafter appointed shall, before he enters upon the duties of his office, subscribe these rules and articles.

ART. 2. These rules and articles shall be read to every enlisted man at the time of, or within six days after, his enlistment, and he shall thereupon take an oath or affirmation, in the following form: "I, A. B., do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States, and the orders of the officers appointed over me, according to the rules and articles of war." This oath may be taken before any commissioned officer of the Army.

ART. 3. Every officer who knowingly enlists or musters into the military service any minor over the age of 16 years without the written consent of his parents or guardians, or any minor under the age of 16 years, or any insane or intoxicated persons, or any deserter from the military or naval service of the United States, or any person who has been convicted of any infamous criminal offense, shall, upon conviction, be dismissed from the service, or suffer such other punishment as a court-martial may direct.

ART. 4. No enlisted man, duly sworn, shall be discharged from the service without a discharge in writing, signed by a field officer of the regiment to which he belongs, or by the commanding officer, when no field officer is present; and no discharge shall be given to any enlisted man before his term of service has expired, except by order of the President, the Secretary of War, the commanding officer of a department, or by sentence of a general court-martial.

ART. 5. Any officer who knowingly musters as a soldier a person who is not a soldier shall be deemed guilty of knowingly making a false muster, and punished accordingly.

ART. 6. Any officer who takes money, or other thing, by way of gratification, on mustering any regiment, troop, battery, or company, or on signing muster rolls, shall be dismissed from the service, and shall thereby be disabled to hold any office or employment in the service of the United States.

ART. 7. Every officer commanding a regiment, an independent troop, battery, or company, or a garrison, shall, in the beginning of every month, transmit through the proper channels, to the Department of War, an exact return of the same, specifying the names of the officers then absent from their posts, with the reasons for and the time of their absence. And any officer who, through neglect or design, omits to send such returns, shall, on conviction thereof, be punished as a court-martial may direct.

ART. 8. Every officer who knowingly makes a false return to the Department of War, or to any of his superior officers, authorized to call for such returns, of the state of the regiment, troop or company, or garrison under his command; or of the arms, ammunition, clothing or other stores thereunto belonging, shall, on conviction thereof before a court-martial, be cashiered.[1]

ART. 9. All public stores taken from the enemy shall be secured for the service or the United States; and for neglect thereof the commanding officer shall be answerable.

ART. 10. Every officer commanding a troop, battery, or company, is charged with the arms, accoutrements, ammunition, clothing, or other military stores belonging to his command, and is accountable to his colonel in case of their being lost, spoiled, or damaged otherwise than by unavoidable accident, or on actual service.

ART. 11. Every officer commanding a regiment or an independent troop, battery, or company, not in the field, may, when actually quartered with such command, grant furloughs to the enlisted men, in such numbers and for such time as he shall deem consistent with the good of the service. Every officer commanding a regiment, or an independent troop, battery, or company, in the field, may grant furloughs not exceeding thirty days at one time, to five per centum of the enlisted men, for good conduct in the line of duty, but subject to the approval of the commander of the forces of which said enlisted men form a part. Every company officer of a regiment, commanding any troop, battery, or company not in the field, or commanding in any garrison, fort, post, or barrack, may, in the absence of his field officer, grant furloughs to the enlisted men, for a time not exceeding twenty days in six months, and not to more than two persons to be absent at the same time.

[1] "Cashiered" and "dismissed from the service" are now considered practically synonymous.

ART. 12. At every muster of a regiment, troop, battery, or company, the commanding officer thereof shall give to the mustering officer certificates, signed by himself, stating how long absent officers have been absent and the reasons of their absence. And the commanding officer of every troop, battery, or company shall give like certificates, stating how long absent noncommissioned officers and private soldiers have been absent and the reasons of their absence. Such reasons and time of absence shall be inserted in the muster rolls opposite the names of the respective absent officers and soldiers, and the certificates, together with the muster rolls, shall be transmitted by the mustering officer to the Department of War, as speedily as the distance of the place and muster will admit.

ART. 13. Every officer who signs a false certificate, relating to the absence or pay of an officer or soldier, shall be dismissed from the service.

ART. 14. Any officer who knowingly makes a false muster of man or horse, or who signs, or directs, or allows the signing of any muster roll, knowing the same to contain a false muster, shall, upon proof thereof by two witnesses, before a court-martial, be dismissed from the service, and shall thereby be disabled to hold any office or employment in the service of the United States.

ART. 15. Any officer who, willfully or through neglect, suffers to be lost, spoiled, or damaged, any military stores belonging to the United States, shall make good the loss or damage, and be dismissed from the service.

ART. 16. Any enlisted man who sells, or willfully or through neglect wastes the ammunition delivered out to him, shall be punished as a court-martial may direct.

ART. 17. Any soldier who sells or through neglect loses or spoils his horse, arms, clothing, or accoutrements shall be punished as a court-martial may adjudge, subject to such limitation as may be prescribed by the President by virtue of the power vested in him.[1]

[1] 17th A. W., as amended by act of July 27, 1892; see G. O. 57, A. G. O., 1892.

ART. 18. Any officer commanding in any garrison, fort, or barracks of the United States who, for his private advantage, lays any duty or imposition upon, or is interested in, the sale of any victuals, liquors, or other necessaries of life, brought into such garrison, fort, or barracks, for the use of the soldiers, shall be dismissed from the service.

ART. 19. Any officer who uses contemptuous or disrespectful words against the President, the Vice-President, the Congress of the United States, or the chief magistrate or legislature of any of the United States in which he is quartered, shall be dismissed from the service, or otherwise punished, as a court-martial may direct. Any soldier who so offends shall be punished as a court-martial may direct.

ART. 20. Any officer or soldier who behaves himself with disrespect toward his commanding officer shall be punished as a court-martial may direct.

ART. 21. Any officer or soldier who, on any pretense whatsoever, strikes his superior officer, or draws or lifts up any weapon, or offers any violence against him, being in the execution of his office, or disobeys any lawful command of his superior officer,[1] shall suffer death, or such other punishment as a court-martial may direct.

ART. 22. Any officer or soldier who begins, excites, causes, or joins in any mutiny or sedition, in any troop, battery, company, party, post, detachment, or guard, shall suffer death, or such other punishment as a court-martial may direct.

ART. 23. Any officer or soldier who, being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same, or having knowledge of any intended mutiny or sedition, does not, without delay, give information thereof to his commanding officer, shall suffer death, or such other punishment as a court-martial may direct.

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[1] Disobedience of an order of a noncommissioned officer should be charged under the 62d article; see form 13, page 115, *infra*.

ART. 24. All officers, of what condition soever, have power to part and quell all quarrels, frays, and disorders, whether among persons belonging to his[1] own or to another corps, regiment, troop, battery, or company, and to order officers into arrest, and noncommissioned officers and soldiers into confinement, who take part in the same, until their proper superior officer is acquainted therewith. And whosoever, being so ordered, refuses to obey such officer or noncommissioned officer, or draws a weapon upon him, shall be punished as a court-martial may direct.

ART. 25. No officer or soldier shall use any reproachful or provoking speeches or gestures to another. Any officer who so offends shall be put in arrest. Any soldier who so offends shall be confined, and required to ask pardon of the party offended, in the presence of his commanding officer.

ART. 26. No officer or soldier shall send a challenge to another officer or soldier to fight a duel, or accept a challenge so sent. Any officer who so offends shall be dismissed from the service. Any soldier who so offends shall suffer such punishment as a court-martial may direct.

ART. 27. Any officer or noncommissioned officer, commanding a guard, who, knowingly and willingly, suffers any person to go forth to fight a duel, shall be punished as a challenger; and all seconds or promoters of duels, and carriers of challenges to fight duels, shall be deemed principals, and punished accordingly. It shall be the duty of any officer commanding an army, regiment, troop, battery, company, post, or detachment, who knows or has reason to believe that a challenge has been given or accepted by any officer or enlisted man under his command, immediately to arrest the offender and bring him to trial.

ART. 28. Any officer or soldier who upbraids another officer or soldier for refusing a challenge shall himself be punished as a challenger; and all officers and soldiers are hereby discharged from any disgrace or opinion of

[1] *Sic* in Revised Statutes.

disadvantage which might arise from their having refused to accept challenges, as they will only have acted in obedience to the law, and have done their duty as good soldiers, who subject themselves to discipline.

ART. 29. Any officer who thinks himself wronged by the commanding officer of his regiment, and, upon due application to such commander, is refused redress, may complain to the general commanding in the State or Territory where such regiment is stationed. The general shall examine into said complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, transmit to the Department of War a true statement of such complaint, with the proceedings had thereon.

ART. 30. Any soldier who thinks himself wronged by any officer may complain to the commanding officer of his regiment, who shall summon a regimental court-martial for the doing of justice to the complainant. Either party may appeal from such regimental court-martial to a general court-martial; but if, upon such second hearing, the appeal appears to be groundless and vexatious, the party appealing shall be punished at the discretion of said general court-martial.[1]

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[1]The "regimental court-martial" under the 30th A. W. can not be used as a substitute for a general court-martial or court of inquiry, for it can not try an officer nor make an investigation for the purpose of determining whether he shall be brought to trial. When, if the soldier's complaint should be sustained, the only redress would be a reprimand to the officer, the matter would not be within the jurisdiction of this court. It can only investigate such matters as are susceptible of redress by the doing of justice to the complainant; that is, when in some way he can be set right by putting a stop to the wrongful condition which the officer has caused to exist. Erroneous stoppages of pay, irregularity of detail, the apparent requirement of more labor than from other soldiers, and the like, might in this way be investigated and the wrongful condition put an end to. The court will in such cases record the evidence and its conclusions of fact, and recommend the action to be taken. The members of the court (and the judge-advocate) will be sworn faithfully to perform their duties as members (and judge-advocate) of the court, and the proceedings will be recorded, as nearly as practicable, in the same manner as the proceedings of ordinary courts-martial. (J. A. G.)

ART. 31. Any officer or soldier who lies out of his quarters, garrison, or camp, without leave from his superior officer, shall be punished as a court-martial may direct.

ART. 32. Any soldier who absents himself from his troop, battery, company, or detachment, without leave from his commanding officer, shall be punished as a court-martial may direct.

ART. 33. Any officer or soldier who fails, except when prevented by sickness or other necessity, to repair, at the fixed time, to the place of parade, exercise, or other rendezvous appointed by his commanding officer, or goes from the same, without leave from his commanding officer, before he is dismissed or relieved, shall be punished as a court-martial may direct.

ART. 34. Any soldier who is found one mile from camp, without leave in writing from his commanding officer, shall be punished as a court-martial may direct.

ART. 35. Any soldier who fails to retire to his quarters or tent at the beating of retreat, shall be punished according to the nature of his offense.

ART. 36. No soldier belonging to any regiment, troop, battery, or company shall hire another to do his duty for him, or be excused from duty, except in cases of sickness, disability, or leave of absence. Every such soldier found guilty of hiring his duty, and the person so hired to do another's duty, shall be punished as a court-martial may direct.

ART. 37. Every noncommissioned officer who connives at such hiring of duty shall be reduced. Every officer who knows and allows such practices shall be punished as a court-martial may direct.

ART. 38. Any officer who is found drunk on his guard, party, or other duty, shall be dismissed from the service. Any soldier who so offends shall suffer such punishment as a court-martial may direct. No court-martial shall sentence any soldier to be branded, marked, or tattooed.

ART. 39. Any sentinel who is found sleeping upon his post, or who leaves it before he is regularly relieved,

shall suffer death, or such other punishment as a court-martial may direct.

ART. 40. Any officer or soldier who quits his guard, platoon, or division, without leave from his superior officer, except in a case of urgent necessity, shall be punished as a court-martial may direct.

ART. 41. Any officer who, by any means whatsoever, occasions false alarms in camp, garrison, or quarters, shall suffer death, or such other punishment as a court-martial may direct.

ART. 42. Any officer or soldier who misbehaves himself before the enemy, runs away, or shamefully abandons any fort, post, or guard, which he is commanded to defend, or speaks words inducing others to do the like, or casts away his arms or ammunition, or quits his post or colors to plunder or pillage, shall suffer death, or such other punishment as a court-martial may direct.

ART. 43. If any commander of any garrison, fortress, or post is compelled, by the officers and soldiers under his command, to give up to the enemy or to abandon it, the officers or soldiers so offending shall suffer death, or such other punishment as a court-martial may direct.

ART. 44. Any person belonging to the armies of the United States who makes known the watchword to any person not entitled to receive it, according to the rules and discipline of war, or presumes to give a parole or watchword different from that which he received, shall suffer death, or such other punishment as a court-martial may direct.

ART. 45. Whosoever relieves the enemy with money, victuals, or ammunition, or knowingly harbors or protects an enemy, shall suffer death, or such other punishment as a court-martial may direct.

ART. 46. Whosoever holds correspondence with, or gives intelligence to, the enemy, either directly or indirectly, shall suffer death, or such other punishment as a court-martial may direct.

ART. 47. Any officer or soldier who, having received pay, or having been duly enlisted in the service of the

United States, deserts the same, shall, in time of war, suffer death, or such other punishment as a court-martial may direct; and in time of peace, any punishment, excepting death, which a court-martial may direct.

ART. 48. Every soldier who deserts the service of the United States shall be liable to serve for such period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and such soldier shall be tried by a court-martial and punished, although the term of his enlistment may have elapsed previous to his being apprehended and tried.

ART. 49. Any officer who, having tendered his resignation, quits his post or proper duties, without leave, and with intent to remain permanently absent therefrom, prior to due notice of the acceptance of the same, shall be deemed and punished as a deserter.

ART. 50. No noncommissioned officer or soldier shall enlist himself in any other regiment, troop, or company, without a regular discharge from the regiment, troop, or company in which he last served, on a penalty of being reputed a deserter, and suffering accordingly. And in case any officer shall knowingly receive and entertain such noncommissioned officer or soldier, or shall not, after his being discovered to be a deserter, immediately confine him and give notice thereof to the corps in which he last served, the said officer shall, by a court-martial, be cashiered.

ART. 51. Any officer or soldier who advises or persuades any other officer or soldier to desert the service of the United States, shall, in time of war, suffer death, or such other punishment as a court-martial may direct; and in time of peace, any punishment, excepting death, which a court-martial may direct.

ART. 52. It is earnestly recommended to all officers and soldiers diligently to attend divine service. Any officer who behaves indecently or irreverently at any place of divine worship shall be brought before a general court-martial, there to be publicly and severely reprimanded by the president thereof. Any soldier who so offends

shall, for his first offense, forfeit one-sixth of a dollar; for each further offense he shall forfeit a like sum, and shall be confined twenty-four hours. The money so forfeited shall be deducted from his next pay, and shall be applied, by the captain or senior officer of his troop, battery, or company, to the use of the sick soldiers of the same.

ART. 53. Any officer who uses any profane oath or execration shall, for each offense, forfeit and pay one dollar. Any soldier who so offends shall incur the penalties provided in the preceding article; and all moneys forfeited for such offenses shall be applied as therein provided.

ART. 54. Every officer commanding in quarters, garrison, or on the march, shall keep good order, and, to the utmost of his power, redress all abuses or disorders which may be committed by any officer or soldier under his command; and if, upon complaint made to him of officers or soldiers beating or otherwise ill-treating any person, disturbing fairs or markets, or committing any kind of riot, to the disquieting of the citizens of the United States, he refuses or omits to see justice done to the offender, and reparation made to the party injured, so far as part of the offender's pay shall go toward such reparation, he shall be dismissed from the service, or otherwise punished, as a court-martial may direct.

ART. 55. All officers and soldiers are to behave themselves orderly in quarters and on the march; and whoever commits any waste or spoil, either in walks or trees, parks, warrens, fish ponds, houses, gardens, grain fields, inclosures, or meadows, or maliciously destroys any property whatsoever belonging to inhabitants of the United States, (unless by order of a general officer commanding a separate army in the field,) shall, besides such penalties as he may be liable to by law, be punished as a court-martial may direct.

ART. 56. Any officer or soldier who does violence to any person bringing provisions or other necessaries to the camp, garrison, or quarters of the forces of the United States in foreign parts, shall suffer death, or such other punishment as a court-martial may direct.

ART. 57. Whosoever, belonging to the armies of the United States in foreign parts, or at any place within the United States or their Territories during rebellion against the supreme authority of the United States, forces a safeguard, shall suffer death.

ART. 58. In time of war, insurrection, or rebellion, larceny, robbery, burglary, arson, mayhem, manslaughter, murder, assault and battery with an intent to kill, wounding, by shooting or stabbing, with an intent to commit murder, rape, or assault and battery with an intent to commit rape, shall be punishable by the sentence of a general court-martial, when committed by persons in the military service of the United States, and the punishment in any such case shall not be less than the punishment provided, for the like offense, by the laws of the State, Territory, or district in which such offense may have been committed.

ART. 59. When any officer or soldier is accused of a capital crime, or of any offense against the person or property of any citizen of any of the United States, which is punishable by the laws of the land, the commanding officer, and the officers of the regiment, troop, battery, company, or detachment, to which the person so accused belongs, are required, except in time of war, upon application duly made by or in behalf of the party injured, to use their utmost endeavors to deliver him over to the civil magistrate, and to aid the officers of justice in apprehending and securing him, in order to bring him to trial. If, upon such application, any officer refuses or willfully neglects, except in time of war, to deliver over such accused person to the civil magistrates, or to aid the officers of justice in apprehending him, he shall be dismissed from the service.[1]

ART. 60. Any person in the military service of the United States who makes or causes to be made any claim

[1] Municipal ordinances and by-laws are part of the "laws of the land," within the meaning of the phrase as used in the 59th A. W. (Opin. of Att'y Gen'l; see circular 15, A. G. O., 1894.)

against the United States, or any officer thereof, knowing such claim to be false or fraudulent; or

Who presents or causes to be presented to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof, knowing such claim to be false or fraudulent; or

Who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or against any officer thereof, makes or uses, or procures or advises the making or use of, any writing, or other paper, knowing the same to contain any false or fraudulent statement; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, makes, or procures or advises the making of, any oath to any fact or to any writing or other paper, knowing such oath to be false; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, forges or counterfeits, or procures or advises the forging or counterfeiting of, any signature upon any writing or other paper, or uses, or procures or advises the use of, any such signature, knowing the same to be forged or counterfeited; or

Who, having charge, possession, custody or control of any money or other property of the United States, furnished or intended for the military service thereof, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States, furnished or intended for the military service thereof, makes, or delivers to any person, such writing, without having full knowledge of the truth of the statements therein contained, and with intent to defraud the United States; or

Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money, or other property of the United States, furnished or intended for the military service thereof; or

Who knowingly purchases, or receives in pledge for any obligation or indebtedness, from any soldier, officer, or other person who is a part of or employed in said forces or service, any ordnance, arms, equipments, ammunition, clothing, subsistence stores, or other property of the United States, such soldier, officer, or other person not having lawful right to sell or pledge the same,

Shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial may adjudge. And if any person, being guilty of any of the offenses aforesaid, while in the military service of the United States, receives his discharge, or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial, in the same manner and to the same extent as if he had not received such discharge nor been dismissed.

ART. 61. Any officer who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service.

ART. 62. All crimes not capital, and all disorders and neglects, which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing Articles of War, are to be taken cognizance of by a general, or a regimental, garrison, or field officers' court-martial, according to

the nature and degree of the offense, and punished at the discretion of such court.[1]

ART. 63. All retainers to the camp, and all persons serving with the armies of the United States in the field, though not enlisted soldiers, are to be subject to orders, according to the rules and discipline of war.

ART. 64. The officers and soldiers of any troops, whether militia or others, mustered and in pay of the United States, shall, at all times and in all places, be governed by the Articles of War, and shall be subject to be tried by courts-martial.

ART. 65. Officers charged with crime shall be arrested and confined in their barracks, quarters, or tents, and deprived of their swords by the commanding officer. And any officer who leaves his confinement before he is set at liberty by his commanding officer shall be dismissed from the service.

ART. 66. Soldiers charged with crimes shall be confined until tried by court-martial, or released by proper authority.

ART. 67. No provost marshal, or officer commanding a guard, shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the forces of the United States; provided the officer committing shall, at the same time, deliver an account in writing, signed by himself, of the crime charged against the prisoner.

ART. 68. Every officer to whose charge a prisoner is committed shall, within twenty-four hours after such commitment, or as soon as he is relieved from his guard, report in writing, to the commanding officer, the name of such prisoner, the crime charged against him, and the name of the officer committing him; and if he fails to

[1] "SEC. 3. That fraudulent enlistment, and the receipt of any pay or allowance thereunder, is hereby declared a military offense and made punishable by court-martial, under the 62d Article of War." (Act of July 27, 1892; see G. O. 57, A. G. O., 1892.) For definition of fraudulent enlistment, see page 12, note 4, *supra*, and for forms for charges see pages 114 and 117, *infra*.

make such report, he shall be punished as a court-martial may direct.

ART. 69. Any officer who presumes, without proper authority, to release any prisoner committed to his charge, or suffers any prisoner so committed to escape, shall be punished as a court-martial may direct.

ART. 70. No officer or soldier put in arrest shall be continued in confinement more than eight days, or until such time as a court-martial can be assembled.

ART. 71. When an officer is put in arrest for the purpose of trial, except at remote military posts or stations, the officer by whose order he is arrested shall see that a copy of the charges on which he is to be tried is served upon him within eight days after his arrest, and that he is brought to trial within ten days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said ten days. If a copy of the charges be not served, or the arrested officer be not brought to trial, as herein required, the arrest shall cease. But officers released from arrest, under the provisions of this article, may be tried, whenever the exigencies of the service shall permit, within twelve months after such release from arrest.

ART. 72. Any general officer commanding an army, a Territorial division or a department, or colonel commanding a separate department may appoint general courts-martial whenever necessary. But when any such commander is the accuser or prosecutor of any officer under his command the court shall be appointed by the President; and its proceedings and sentence shall be sent directly to the Secretary of War, by whom they shall be laid before the President, for his approval or orders in the case.[1]

ART. 73. In time of war the commander of a division, or of a separate brigade of troops, shall be competent to appoint a general court-martial. But when such com-

[1] Act of July 5, 1884; see G. O. 73, A. G. O., 1884.

mander is the accuser or prosecuter of any person under his command, the court shall be appointed by the next higher commander.

ART. 74. Officers who may appoint a court-martial shall be competent to appoint a judge-advocate for the same.

ART. 75. General courts-martial may consist of any number of officers from five to thirteen, inclusive; but they shall not consist of less than thirteen when that number can be convened without manifest injury to the service.

ART. 76. When the requisite number of officers to form a general court-martial is not present in any post or detachment, the commanding officer shall, in cases which require the cognizance of such a court, report to the commanding officer of the department, who shall, thereupon, order a court to be assembled at the nearest post or department at which there may be such a requisite number of officers, and shall order the party accused, with necessary witnesses, to be transported to the place where the said court shall be assembled.

ART. 77. Officers of the Regular Army shall not be competent to sit on courts-martial to try the officers or soldiers of other forces, except as provided in Article 78.

ART. 78. Officers of the Marine Corps, detached for service with the Army by order of the President, may be associated with officers of the Regular Army on courts-martial for the trial of offenders belonging to the Regular Army, or to forces of the Marine Corps so detached; and in such cases the orders of the senior officer of either corps, who may be present and duly authorized, shall be obeyed.

ART. 79. Officers shall be tried only by general courts-martial; and no officer shall, when it can be avoided, be tried by officers inferior to him in rank.

ART. 80. In time of war a field officer may be detailed in every regiment, to try soldiers thereof for offenses not capital; and no soldier, serving with his regiment, shall be tried by a regimental [or] garrison court-martial when a field officer of his regiment may be so detailed.

ART. 81. Every officer commanding a regiment or corps shall, subject to the provisions of Article eighty, be competent to appoint, for his own regiment or corps, courts-martial, consisting of three officers, to try offenses not capital.

ART. 82. Every officer commanding a garrison, fort, or other place, where the troops consist of different corps, shall, subject to the provisions of Article eighty, be competent to appoint, for such garrison or other place, courts-martial, consisting of three officers, to try offenses not capital.

ART. 83. Regimental and garrison courts-martial, and field officers detailed to try offenders, shall not have power to try capital cases or commissioned officers, or to inflict a fine exceeding one month's pay, or to imprison or put to hard labor any noncommissioned officer or soldier for a longer time than one month.

ART. 84. The judge-advocate shall administer to each member of the court, before they proceed upon any trial, the following oath, which shall also be taken by all members of regimental and garrison courts-martial: "You, A B, do swear that you will well and truly try and determine, according to evidence, the matter now before you, between the United States of America and the prisoner to be tried, and that you will duly administer justice, without partiality, favor, or affection, according to the provisions of the rules and articles for the government of the armies of the United States, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the custom of war in like cases; and you do further swear that you will not divulge the sentence of the court until it shall be published by the proper authority, except to the judge-advocate; neither will you disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof, as a witness, by a court of justice, in a due course of law. So help you God."

ART. 85. When the oath has been administered to the members of a court-martial, the president of the court shall administer to the judge-advocate, or person officiating as such, an oath in the following form: "You, A B, do swear that you will not disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in due course of law; nor divulge the sentence of the court to any but the proper authority, until it shall be duly disclosed by the same. So help you God."

ART. 86. The court-martial may punish, at discretion, any person who uses any menacing words, signs, or gestures, in its presence, or who disturbs its proceedings by any riot or disorder.

ART. 87. All members of a court-martial are to behave with decency and calmness.

ART. 88. Members of a court-martial may be challenged by a prisoner, but only for cause stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time.

ART. 89. When a prisoner, arraigned before a general court-martial, from obstinacy and deliberate design, stands mute, or answers foreign to the purpose, the court may proceed to trial and judgment, as if the prisoner had pleaded not guilty.

ART. 90. The judge-advocate, or some person deputed by him, or by the general or officer commanding the Army, detachment, or garrison, shall prosecute in the name of the United States, but when the prisoner has made his plea, he shall so far consider himself counsel for the prisoner as to object to any leading question to any of the witnesses, and to any question to the prisoner, the answer to which might tend to criminate himself.

ART. 91. The deposition of witnesses residing beyond the limits of the State, Territory, or district in which any military court may be ordered to sit, if taken on reasonable notice to the opposite party and duly authenticated,

may be read in evidence before such court in cases not capital.[1]

ART. 92. All persons who give evidence before a court-martial shall be examined on oath, or affirmation, in the following form: "You swear (or affirm) that the evidence you shall give, in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth. So help you God."

ART. 93. A court-martial shall, for reasonable cause, grant a continuance to either party, for such time, and as often, as may appear to be just: *Provided*, That if the prisoner be in close confinement, the trial shall not be delayed for a period longer than sixty days.

ART. 94. Proceedings of trials shall be carried on only between the hours of eight in the morning and three in the afternoon, excepting in cases which, in the opinion of the officer appointing the court, require immediate example.

ART. 95. Members of a court-martial, in giving their votes, shall begin with the youngest in commission.

ART. 96. No person shall be sentenced to suffer death, except by the concurrence of two-thirds of the members of a general court-martial, and in the cases herein expressly mentioned.

ART. 97. No person in the military service shall, under the sentence of a court-martial, be punished by confinement in a penitentary, unless the offense of which he may be convicted would, by some statute of the United States, or by some statute of the State, Territory, or District in which such offense may be committed, or by the common law, as the same exists in such State, Territory, or District, subject such convict to such punishment.

ART. 98. No person in the military service shall be punished by flogging, or by branding, marking, or tattooing on the body.

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[1] "SEC. 4. That judge-advocates of departments and of courts-martial, and the trial officers of summary courts, are hereby authorized to administer oaths for the purposes of the administration of military justice, and for other purposes of military administration." (Act of July 27, 1892; see G. O. 57, A. G. O., 1892.)

ART. 99. No officer shall be discharged or dismissed from the service, except by order of the President, or by sentence of a general court-martial; and in time of peace no officer shall be dismissed, except in pursuance of the sentence of a court-martial, or in mitigation thereof.

ART. 100. When an officer is dismissed from the service for cowardice or fraud, the sentence shall further direct that the crime, punishment, name, and place of abode of the delinquent shall be published in the newspapers in and about the camp, and in the State from which the offender came, or where he usually resides; and after such publication it shall be scandalous for an officer to associate with him.

ART. 101. When a court-martial suspends an officer from command, it may also suspend his pay and emoluments for the same time, according to the nature of his offense.

ART. 102. No person shall be tried a second time for the same offense.

ART. 103. No person shall be liable to be tried and punished by a general court-martial for any offense which appears to have been committed more than two years before the issuing of the order for such trial, unless, by reason of having absented himself, or of some other manifest impediment, he shall not have been amenable to justice within that period.

No person shall be tried or punished by a court-martial for desertion in time of peace and not in the face of an enemy, committed more than two years before the arraignment of such person for such offense, unless he shall meanwhile have absented himself from the United States, in which case the time of his absence shall be excluded in computing the period of the limitation: *Provided*, That said limitation shall not begin until the end of the term for which said person was mustered into the service.[1]

ART. 104. No sentence of a court-martial shall be carried into execution until the same shall have been ap-

[1] 103d A. W., as amended by act of April 11, 1890; see G. O. 45, A. G. O., 1890.

proved by the officer ordering the court, or by the officer commanding for the time being.[1]

ART. 105. No sentence of a court-martial, inflicting the punishment of death, shall be carried into execution until it shall have been confirmed by the President; except in the cases of persons convicted, in time of war, as spies, mutineers, deserters, or murderers, and in the cases of guerilla marauders, convicted, in time of war, of robbery, burglary, arson, rape, assault with intent to commit rape, or of violation of the laws and customs of war; and in such excepted cases the sentence of death may be carried into execution upon confirmation by the commanding general in the field, or the commander of the department, as the case may be.

ART. 106. In time of peace no sentence of a court-martial, directing the dismissal of an officer, shall be carried into execution, until it shall have been confirmed by the President.

ART. 107. No sentence of a court-martial appointed by the commander of a division or of a separate brigade of troops, directing the dismissal of an officer, shall be carried into execution until it shall have been confirmed by the general commanding the army in the field to which the division or brigade belongs.

ART. 108. No sentence of a court-martial, either in time of peace or in time of war, respecting a general officer, shall be carried into execution, until it shall have been confirmed by the President.

ART. 109. All sentences of a court-martial may be confirmed and carried into execution by the officer ordering the court, or by the officer commanding for the time being, where confirmation by the President, or by the commanding general in the field, or commander of the department, is not required by these articles.

ART. 110. No sentence adjudged by a field officer, detailed to try soldiers of his regiment, shall be carried into execution until the same shall have been approved by the

[1] 104th A. W., as amended by act of July 27, 1892; see G. O. 57, A. G. O., 1892.

brigade commander, or, in case there be no brigade commander, by the commanding officer of the post or camp.[1]

ART. 111. Any officer who has authority to carry into execution the sentence of death, or of dismissal of an officer, may suspend the same until the pleasure of the President shall be known; and, in such case, he shall immediately transmit to the President a copy of the order of suspension, together with a copy of the proceedings of the court.

ART. 112. Every officer who is authorized to order a general court-martial shall have power to pardon or mitigate any punishment adjudged by it, except the punishment of death or of dismissal of an officer. Every officer commanding a regiment or garrison in which a regimental or garrison court-martial may be held, shall have power to pardon or mitigate any punishment which such court may adjudge.[2]

ART. 113. Every judge-advocate, or person acting as such, at any general court-martial, shall, with as much expedition as the opportunity of time and distance of place may admit, forward the original proceedings and sentence of such court to the Judge-Advocate-General of the Army, in whose office they shall be carefully preserved.

ART. 114. Every party tried by a general court-martial shall, upon demand thereof, made by himself or by any person in his behalf, be entitled to a copy of the proceedings and sentence of such court.

ART. 115. A court of inquiry, to examine into the nature of any transaction of, or accusation or imputation against, any officer or soldier, may be ordered by the President or by any commanding officer; but, as courts of inquiry may be perverted to dishonorable purposes, and may be employed, in the hands of weak and envious commandants, as engines for the destruction of military merit, they shall never be ordered by any commanding officer, except upon a demand by the officer or soldier whose conduct is to be inquired of.

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[1] 110th A. W., as amended by act of July 27, 1892; see G. O. 57, A. G. O., 1892.

[2] See Par. 916, A. R.

ART. 116. A court of inquiry shall consist of one or more officers, not exceeding three, and a recorder, to reduce the proceedings and evidence to writing.

ART. 117. The recorder of a court of inquiry shall administer to the members the following oath: "You shall well and truly examine and inquire, according to the evidence, into the matter now before you, without partiality, favor, affection, prejudice, or hope of reward. So help you God." After which the president of the court shall administer to the recorder the following oath: "You, A B, do swear that you will, according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you God."

ART. 118. A court of inquiry, and the recorder thereof, shall have the same power to summon and examine witnesses as is given to courts-martial and the judge-advocates thereof. Such witnesses shall take the same oath which is taken by witnesses before courts-martials,[1] and the party accused shall be permitted to examine and cross-examine them, so as fully to investigate the circumstances in question.

ART. 119. A court of inquiry shall not give an opinion on the merits of the case inquired of unless specially ordered to do so.

ART 120. The proceedings of a court of inquiry must be authenticated by the signatures of the recorder and the president thereof, and delivered to the commanding officer.

ART. 121. The proceedings of a court of inquiry may be admitted as evidence by a court-martial, in cases not capital, nor extending to the dismissal of an officer: *Provided*, That the circumstances are such that oral testimony can not be obtained.

ART. 122. If, upon marches, guards, or in quarters, different corps of the Army happen to join or do duty together, the officer highest in rank of the line of the Army, Marine Corps, or militia, by commission, there on duty or

[1] *Sic.* in Revised Statutes.

in quarters, shall command the whole, and give orders for what is needful to the service, unless otherwise specially directed by the President, according to the nature of the case.

ART. 123. In all matters relating to the rank, duties, and rights of officers, the same rules and regulations shall apply to officers of the Regular Army and to volunteers commissioned in, or mustered into said service, under the laws of the United States, for a limited period.

ART. 124. Officers of the militia of the several States, when called into the service of the United States, shall on all detachments, courts-martial, and other duty wherein they may be employed in conjunction with the regular or volunteer forces of the United States, take rank next after all officers of the like grade in said regular or volunteer forces, notwithstanding the commissions of such militia officers may be older than the commissions of the said officers of the regular or volunteer forces of the United States.

ART. 125. In case of the death of any officer, the major of his regiment, or the officer doing the major's duty, or the second officer in command at any post or garrison, as the case may be, shall immediately secure all his effects then in camp or quarters, and shall make, and transmit to the office of the Department of War, an inventory thereof.

ART. 126. In case of the death of any soldier, the commanding officer of his troop, battery, or company shall immediately secure all his effects then in camp or quarters, and shall, in the presence of two other officers, make an inventory thereof, which he shall transmit to the office of the Department of War.

ART. 127. Officers charged with the care of the effects of deceased officers or soldiers shall account for and deliver the same, or the proceeds thereof, to the legal representatives of such deceased officers or soldiers. And no officer so charged shall be permitted to quit the regiment or post until he has deposited in the hands of the commanding officer all the effects of such deceased officers or soldiers not so accounted for and delivered.

ART. 128. The foregoing articles shall be read and published, once in every six months, to every garrison, regiment, troop, or company in the service of the United States, and shall be duly observed and obeyed by all officers and soldiers in said service.

OTHER STATUTORY PROVISIONS DEFINING COURT-MARTIAL OFFENSES.

Sec. 1343, R. S. "All persons who, in time of war, or of rebellion against the supreme authority of the United States, shall be found lurking or acting as spies, in or about any of the fortifications, posts, quarters, or encampments of any of the armies of the United States, or elsewhere, shall be triable by a general court-martial, or by a military commission, and shall, on conviction thereof, suffer death."

Sec. 5306, R. S. "Every officer of the United States, civil, military, or naval, and every sutler, soldier, marine, or other person, who takes, or causes to be taken into a State declared to be in insurrection, or to any other point to be thence taken into such State, or who transports or sells, or otherwise disposes of therein, any goods, wares, or merchandise whatsoever, except in pursuance of license and authority of the President, as provided in this title [see sec. 5304], or who makes any false statement or representation upon which license and authority is granted for such transportation, sale, or other disposition, or who, under any license or authority obtained, willfully and knowingly transports, sells, or otherwise disposes of any other goods, wares, or merchandise than such as are in good faith so licensed and authorized, or who willfully and knowingly transports, sells, or disposes of the same, or any portion thereof, in violation of the terms of such license or authority, or of any rule or regulation prescribed by the Secretary of the Treasury concerning the same, or who is guilty of any act of embezzlement, of willful misappropriation of public or private money or property, of keeping false accounts, or of willfully making any false returns, shall be deemed guilty of a misdemeanor, and shall be fined not more than five

thousand dollars, and imprisoned in the penitentiary not more than three years. Violations of this section shall be cognizable before any court, civil or military, competent to try the same."

Sec. 5313, R. S. "All persons in the military or naval service of the United States are prohibited from buying or selling, trading, or in any way dealing in captured or abandoned property, whereby they shall receive or expect any profit, benefit, or advantage to themselves, or any other person, directly or indirectly connected with them; and it shall be the duty of such person whenever such property comes into his possession or custody, or within his control, to give notice thereof to some agent, appointed by virtue of this title [see sec. 5305], and to turn the same over to such agent without delay. Any officer of the United States, civil, military, or naval, or any sutler, soldier, or marine, or other person who shall violate any provision of this section shall be deemed guilty of a misdemeanor, and shall be fined not more than five thousand dollars, and imprisoned in the penitentiary not more than three years. Violations of this section shall be cognizable before any court, civil or military, competent to try the same."

ACT ESTABLISHING THE SUMMARY COURT.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That hereafter in time of peace all enlisted men charged with offenses now cognizable by a garrison or regimental court-martial shall, within twenty-four hours from the time of their arrest, be brought before a summary court, which shall consist of the line officers[1] second in rank at the post or station or of the command of the alleged offender, and at stations where only officers of the staff are on duty the officers second in rank shall constitute such court, who shall have power to administer oaths and to hear and determine the case, and when satisfied of the guilt of the accused party adjudge the punishment to be

[1] *Sic* in the roll.

inflicted. There shall be a summary court record book or docket kept at each military post, and in the field at the headquarters of the command, in which shall be entered a record of all cases heard and determined and the action had thereon, and no sentence adjudged by said summary court shall be executed until it shall have been approved by the post or other commander:[1] *Provided*, That when but one commissioned officer is present with a command he shall hear and finally determine such cases as require summary action: *Provided further*, That the President be, and he hereby is, authorized to prescribe specific penalties for such minor offenses as are now brought before garrison and regimental courts-martial: *Provided, further*, That any enlisted man charged with an offense and brought before such summary court may, if he so desires, object to a hearing and determination of his case by such court and request a trial by court-martial, which request shall be granted as of right, and when the court is the accuser the case shall be heard and determined by the post commander, or by regimental or garrison court-martial: *And provided further*, That post and other commanders shall, on the last day of each month, make a report to the department headquarters of the number of cases determined by summary court during the month, setting forth the offenses committed and the penalties awarded, which reports shall be filed in the office of the judge-advocate of the department. * * *

"Approved October 1, 1890."

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[1] "SEC. 5. That the commanding officers authorized to approve the sentences of summary courts shall have the power to remit or mitigate the same." (Act of July 27, 1892; see G. O. 57, A. G. O., 1892.)

GENERAL FORMS.

FORMS FOR CHARGES.

Charge and specification preferred against Private A—— B——, Co. ——, —— U. S. Infantry.

Form 1.—(*a*) **Charge**: "Selling clothing,[1] in violation of the 17th Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, did sell the following articles of his uniform clothing, issued to him, viz: One (1) forage cap, value $——; one (1) overcoat, made, value $——; and one (1) blanket, woolen, value $——; total value of articles sold, $——.

"This at ——, on the —— of ——, 18—."

C—— D——,
Captain, —— *Infantry,*
Officer Preferring Charge.

Witnesses:

1st Sergeant E—— F——, Co. ——, —— Infantry.
Private G—— H——, Troop ——, —— Cavalry.
Mr. I—— K——, citizen.

or,

(*b*) "Losing accoutrements, in violation of the 17th Article of War."[2]

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, did, through neglect, lose the following articles of his accoutrements, issued to him, viz: One (1) ——, value, $——; and one (1) ——, value $——; total value of articles lost, $——.

"This at, etc."

---

[1] See page 17, Sec. III, *supra.*

[2] If a soldier is known to have unlawfully disposed of his clothing or accoutrements in a way not mentioned in the 17th Article, the charge should be laid under the 62d Article.

Form 2.—(*a*) **Charge**: "Disobedience of orders,[1] in violation of the 21st Article of War."

Specification: In that Private A—— B——, Co. ——, —— U. S. Infantry, having received a lawful command from his superior officer, 2d Lieut. C—— D——, —— Infantry, to (*insert order*), did willfully disobey the same.

"This at ——, on the —— of ——, 18—."

or,

(*b*) "Striking his superior officer, in violation of the 21st Article of War."

Specification: "In that Private A——B ——, Co. ——, —— U. S. Infantry, did strike his superior officer, 2d Lieut. C—— D——, —— Infantry, the said Lieutenant being in the execution of his office, with ——.

"This at ——, on the —— of ——, 18—."

Form 3.—**Charge**: "Absence without leave, in violation of the 32d Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, did absent himself from his company, without leave from his commanding officer, from ——, on the —— of —— 18—, until ——, on the —— of ——18—.

"This at ——."

Form 4.—(*a*) **Charge**: "Absence from parade, in violation of the 33d Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, not being prevented by sickness or other necessity, did fail to repair, at the fixed time, to the place of parade appointed by his commanding officer.

"This at ——, on the —— of ——, 18—."

or,

(*b*) "Absence from 11 p. m. inspection, in violation of the 33d Article of War."

---

[1] A noncompliance by a soldier with an order emanating from a noncommissioned officer is not an offense under this article, but one to be charged, in general, under the 62d. A simple neglect to comply with a standing order is an offense under the 62d Article, and not under the 21st, which implies a willful defiance of authority.

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, not being prevented by sickness or other necessity, did fail to repair, at the fixed time, to the place appointed by his commanding officer for 11 o'clock p. m. inspection of his company.

"This at ——, on the —— of ——, 18—."

Form 5.—(*a*). **Charge**: "Drunkenness on duty, in violation of the 38th Article of War."

Specification: In that Private A—— B——, Co. ——, —— U. S. Infantry, while on duty on stable guard, was found drunk.

"This at ——, about ——, on the —— of ——, 18—."

or,

(*b*) "In that Private A—— B——, Co. ——, —— U. S. Infantry, while on duty at drill, was found drunk.

"This at, etc."

Form 6.—(*a*) **Charge**: "Sleeping on post, in violation of the 39th Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, while on duty as a sentinel, was found sleeping on his post.

"This at ——, about ——, on the —— of ——, 18—."

or,

(*b*) "Leaving post, in violation of the 39th Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, being on duty as a sentinel, did leave his post before he was regularly relieved.

"This at, etc."

Form 7.—**Charge**: "Quitting guard, in violation of the 40th Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, being on guard, did, without urgent necessity, quit his guard without leave from his superior officer.

"This at ——, about ——, on the —— of —— 18—."

Form 8.—(*a*) **Charge**: "Desertion, in violation of the 47th Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, a soldier in the service of the United States,[1] did desert the same at ——, on or about the —— of ——, 18—, and did remain absent in desertion until he was apprehended (or until he surrendered himself), at ——, on or about the —— of ——, 18—."

(*b*) If a soldier deserts and enlists in another troop, he should be charged with desertion under the 47th Article, and also with "fraudulent enlistment, to the prejudice of good order and military discipline," under the 62d.[2] The specification to the latter charge should read as follows:

"In that Private A—— B——, Co.——, —— Infantry, a soldier in the service of the United States, did, without a discharge from said regiment of infantry, fraudulently enlist in Troop ——, —— U. S. Cavalry, at ——, on the —— of ——, 18—, under the name of ——."

Form 9.—**Charge**: "Larceny, in violation of the 60th Article of War."

Specification: "In that Private A—— B——, Co. ——, ——U. S. Infantry, did feloniously take, steal, and carry away ——, of the value of $——, the property of the United States furnished and intended for the military service thereof.

"This at ——, on the —— of ——, 18—."

Violations of the 62d Article of War.

Form 10.—**Charge**: "Neglect of duty, to the prejudice of good order and military discipline."

---

[1] This form is applicable either in case a soldier has "received pay" or has been "duly enlisted." In either case the "statement of service" will enable the court to determine as to the statute of limitation and proper punishment. (See page 32, par. 10, and page 53, *supra*.

[2] See 50th A. W. and G. O. 57, A. G. O., 1892. For definition of "fraudulent enlistment," see page 12, note 4, *supra*.

Specification: "In that Private A—— B——, Co. ——, ——U. S. Infantry, being on duty as ——, and it being his duty as such to ——, did fail and neglect to perform said duty.

"This at ——, on the —— of ——, 18—."

Form 11.—**Charge**: "Drunkenness and disorderly conduct, to the prejudice of good order and military discipline."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, was drunk and disorderly in ——.

"This at ——, about ——, on the —— of ——, 18—."

Form 12.—**Charge**: "Suffering a prisoner to escape, to the prejudice of good order and military discipline."

(*a*) *Specification:* In that Private A—— B——, Co. ——, —— U. S. Infantry, while on duty as a sentinel, did, through neglect, suffer Private C—— D——, Co. ——, —— U. S. Infantry, a prisoner under his charge, to escape.

"This at ——, on the —— of ——, 18—."

or,

(*b*) *Specification:* "In that Private A—— B——, Co. ——, —— U. S. Infantry, while on duty as a sentinel, did willfully suffer Private C—— D——, Co. ——, —— U. S. Infantry, a prisoner under his charge, to escape.

"This at ——, on the —— of ——, 18—."

Form 13.—**Charge**: "Conduct to the prejudice of good order and military discipline."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, having received a lawful order from 1st Sergt. C—— D——, Co. ——, —— U. S. Infantry, the said sergeant being in the execution of his office, to (*insert order*), did willfully disobey the same.

"This at ——, on the —— of ——, 18—."

Form 14.—**Charge**: "Assault with intent to kill, to the prejudice of good order and military discipline."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, did feloniously assault Sergeant ——, Co. ——, —— U. S. Infantry, by stabbing him with a knife, with intent to kill.

"This at ——, on the —— of ——, 18—."

Form 15.—**Charge:** "Burglary, to the prejudice of good order and military discipline."

Specification: "In that Private A—— B——, Co. ——, —— Infantry, did, in the night-time, break into and enter the quarters of 1st Lieut. C—— D——, —— U. S. Cavalry, with intent to commit a felony, to wit:—

"This at ——, about —— o'clock —— m., on the —— of ——, 18—."

Form 16.—**Charge:** "Larceny, to the prejudice of good order and military discipline."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, did feloniously take, steal, and carry away ——, of the value of —— dollars ($——), the property of Corporal ——, Co. ——, —— U. S. Infantry.

"This at ——, on the —— of ——, 18—."

Form 17.—**Charge:** "Perjury,[1] to the prejudice of good order and military discipline."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, having been duly sworn, at his own request, as a witness in his own defense before a —— court-martial, convened at ——, by —— order No. ——, dated ——, 18—, for his trial, did willfully, falsely, and corruptly testify as follows:

---

[1] Wharton says (Criminal Law, sec. 1259), "Perjury before courts-martial is by statute made indictable in most jurisdictions; but even when a statute does not apply, the weight of authority is that it is perjury at common law." It is a statutory crime, under section 5392 Revised Statutes of the United States. So that false swearing before a court-martial, if it possesses the other elements of perjury, is perjury, and can be tried as such by court-martial under the 62d Article of War. The rules of evidence in regard to perjury will then apply. When any of the elements of perjury are lacking the offense will properly be charged as "false swearing;" *e. g.*, when the matter is *not* material to the issue.

"Question by judge-advocate: —— —— ?

"Answer: —— ——.

"Which testimony was false in that (*specify in what respects*), and which testimony was known by him, the said A—— B——, to be false, was material to the issue then being tried, and was given with intent to deceive the court.

"This at ——, on the —— of ——, 18—."

If any person not a soldier[1] fraudulently enlist in the United States service, the charge and specification should read:[2]

Form 18.—**Charge**: "Fraudulent enlistment, in violation of the 62d Article of War."

(*a*) *Specification:* "In that Private A—— B——, Co. ——, —— U. S. Infantry, did, at ——, on the —— of ——, 18—, fraudulently enlist as a soldier in the service of the United States, by falsely representing that he had never been discharged from the United States service by sentence of a military court and by deliberately and willfully concealing from the recruiting officer, ——, the fact of his dishonorable discharge from ——, on ——, pursuant to sentence of court-martial; and that he has at ——, since said enlistment, received pay and allowances thereunder."

or,

(*b*) *Specification:* "In that Private A—— B——, Co. ——, —— U. S. Infantry, did, at ——, on the —— of ——, 18—, he being a minor, fraudulently enlist as a soldier in the service of the United States by falsely representing himself to be over 21 years, to wit, —— years and —— months of age; and that he has at ——, since said enlistment, received pay and allowances thereunder."

---

[1] For case of fraudulent enlistment by a soldier, see page 114, form 8 (*b*), *supra;* and for definition of "fraudulent enlistment," see page 12, note 4, *supra.*

[2] Sec. 3 of the act of July 27, 1892; see page 97, note 1, *supra.*

STATEMENT OF SERVICE.[1]

Statement of service of —— ——, Company ——, —— Regiment ——. (Required by paragraph 927, Army Regulations.)

FORMER SERVICE.

Date of enlistment.	Date of discharge.	Character on discharge.

Date of present enlistment —— ——, 18—.

Date of confinement under present charges —— ——, 18—.

—— ——,

—— —— (Place.) *Commanding* ——.

—— —— (Date.)

SURGEON'S REPORT ON ALLEGED DESERTER.

FORT —— ——,

—— ——, 18—.

SIR: In compliance with par. ——, A. R., I have the honor to report that I have critically examined —— ——, an alleged deserter, and find him fit for service; (*or*) unfit for service on account of ——.

—— ——,

To the *Post Surgeon.*

Post Adjutant.

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[1] See page 66, par. 5, *supra*. This form will be printed on official letter paper.

RECORD OF A GENERAL COURT-MARTIAL.[1]

SEC. I.—FORM FOR RECORD.

Page 1.[2]
(*In margin.*)[3]

CASE 1.

Proceedings[4] of a general court-martial which convened at ——, ——, pursuant to the following order:

(*Here insert a literal copy of the order appointing the court, and, following it, copies of any orders modifying the detail.*)

HEADQUARTERS DEPARTMENT OF ——,
——, ——, 18—.

SPECIAL ORDERS }
No. ——. }

A general court-martial is appointed to meet at ——, ——, at —— m., on —— ——, 18—, or as soon thereafter as practicable, for the trial of such persons as may be properly brought before it.

DETAIL FOR THE COURT.

Major....., 5th Cavalry.
Captain....., 2d Artillery.
Captain....., assistant surgeon.
1st Lieutenant....., 10th Infantry.
1st Lieutenant....., 5th Cavalry.
2d Lieutenant....., 2d Artillery.
2d Lieutenant....., 10th Infantry.
1st Lieutenant....., 5th Cavalry, judge-advocate.

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[1] See "Record of proceedings," page 65, *supra*. The record will be clear and legible, and, if practicable, without erasure or interlineation.

[2] The pages of the record will be numbered and margins of 1 inch will be left at the top, bottom, and left side of each page.

[3] Words inclosed in parentheses, ( ), or brackets, [ ], are simply explanatory, and will not be copied in the record.

[4] "Every party tried by a general court-martial shall, upon demand thereof, made by himself or by any person in his behalf, be entitled to a copy of the proceedings and sentence of such court." (114th A. W.) Applications for copies under this article will be addressed to the Judge-Advocate-General. (Par. 894, A. R.)

(*If less than thirteen members are detailed, the order will state:*)

A greater number of officers can not be assembled without manifest injury to the service.

(*In case travel is necessary, the following sentence will be added:*)

The journeys required in complying with this order are necessary for the public service.

By command of Brigadier-General —— ——.

(Signed) ——— ——,

Assistant Adjutant-General.

FORT —— ——,

—— ——, 18—.

The court met pursuant to the foregoing order at —— o'clock — m.[1]

PRESENT.[2]

Major ....., 5th Cavalry.
Captain ....., assistant surgeon.
1st Lieutenant....., 10th Infantry.
1st Lieutenant....., 5th Cavalry.
2d Lieutenant....., 2d Artillery.
1st Lieutenant....., 5th Cavalry, judge-advocate.

ABSENT.

Captain....., 2d Artillery.
2d Lieutenant....., 10th Infantry.

---

[1] "Proceedings of trials shall be carried on only between the hours of eight in the morning and three in the afternoon, except in cases which, in the opinion of the officer appointing the court, require immediate example." (94th A. W.)

[2] In the record of the proceedings of a court-martial at its organization for the trial of a case, the officers detailed as members and judge-advocate will be noted by name as present or absent. In the record of the proceedings of subsequent sessions the following form of words will be used, subject to such modifications as the facts may require: "Present, all the members of the court and the judge-advocate." When the absence of an officer who has not qualified, or who has been relieved or excused as a member, has been accounted for, no further note will be made of it.

(*If the cause of absence is known, it will be recorded; if unknown, it will be so stated.*)[1]

The court then proceeded to the trial of Private —— ——, Battery ——, —— U. S. Artillery, who, having been brought before the court, stated that he did not desire counsel; (*or*) introduced —— —— as counsel.

[REPORTER.][2]

—— —— was duly sworn as reporter.[3]

The order convening the court was read to the accused, and he was asked if he objected to being tried by any member present named therein; to which he replied in the negative.

[CHALLENGES.]

(*or*) that he objected to —— —— on the following grounds:

(*Insert objections.*)

The challenged member stated:

(*Insert the statement of the challenged member, who should always be requested to respond to the challenge and inform the court upon its merits. Should the accused, after this statement, desire to put the challenged member upon his voir dire, the record should continue:*)

The accused having requested that the challenged member be sworn upon his *voir dire*,[4] —— —— was

[1] It is the duty of the judge-advocate to ascertain, if possible, the cause of absence. If a member is absent by order, the number and date of order will be given; if absent sick, a surgeon's certificate of sickness and inability to attend will be furnished by the absent member, and appended to the record.

[2] To facilitate use of form, subheads "reporter," "challenges," etc., are inserted and followed by marginal lines. To use form in case no reporter is employed, follow form to "reporter," and then omit as far as marginal line under "reporter" extends. In like manner omit when necessary for other subheads.

[3] The reporter must be sworn in each case. For form of oath, see page 29, par. 4, *supra*.

[4] For form of oath, see page 29, par. 6, *supra*.

duly sworn by the judge-advocate, and testified as follows:[1]

(*At the close of the examination of the member, the record should continue:*)

The testimony of the challenged member was read to him, and was by him pronounced correct.

(*or*) corrected as follows:[2]

(*Insert corrections.*)

The challenged member, the accused, and judge-advocate then withdrew,[3] and the court was closed, and on being opened the president announced in their presence that the objection of the accused was not sustained[4] (*or*) that the objection was sustained. —— —— then withdrew.

The accused was asked if he objected to any other member present; [5] to which he replied in the negative. (*or*) that he objected to —— —— on the following grounds:

(*Insert objection in full and record as before.*)

The members of the court and the judge-advocate were then duly sworn.[6]

[INTERPRETER.]

(*If an interpreter is required, he should now be sworn.*)

[DELAY.]

(*If delay is desired for cause known, application should now be made and the proceedings of the court recorded.*[7] *If no delay is requested, the record should continue:*)

---

[1] The form of examination should be similar to that given for witness for the defense, page 126, *infra*. The accused should first ask his questions and then the judge-advocate and court such as they may deem pertinent.

[2] See note 1, page 125, *infra*.

[3] See page 65, par. 4, *supra*.

[4] In case of a tie vote see page 22, note 2, *supra*.

[5] Only one member at a time can be challenged, and a record of the proceedings in each case must be made.

[6] Whenever the same court-martial tries more than one prisoner on separate and distinct charges, the court will be sworn at the commencement of each trial and separate proceedings in each case prepared.

[7] See page 29, *supra*.

The accused was then arraigned upon the following charges and specifications:

Charge I. —— ——.

Specification 1st. —— ——.
Specification 2d. —— ——.

Charge II. —— ——.

[PLEA IN BAR.]

To which the accused submitted the following special plea in bar of trial:[1]
(*or*)

To which the accused pleaded as follows:

To the 1st specification, 1st charge; "Guilty;" (*or*) "Not guilty."

To the 2d specification, 1st charge: "Guilty;" (*or*) "Not guilty."

To the 1st charge; "Guilty;" (*or*) "Not guilty."

To the 1st specification, 2d charge, etc.

Sergeant John Jones, Co. ——, —— Infantry, a witness for the prosecution, was duly sworn and testified as follows:

DIRECT EXAMINATION:

Questions by the judge-advocate:

Q. Do you know the accused? If so, state who he is.

A. I do; Private —— ——, Battery ——, —— Artillery.

(*The succeeding questions of the judge-advocate and their answers should follow in order.*)[2]

---

[1] If a special plea is made, the plea, the reply of the judge-advocate, and the action of the court thereon will be fully stated; see page 31, par. 8, *supra*, and page 127, note 2, *infra*.

[2] The record should set forth fully all the *testimony* introduced upon the trial, the oral portion as nearly as practicable in the precise words of the witness. If the court should decide to expunge any part, it will not be literally expunged or omitted from the record, but will not be thereafter considered as part of the evidence.

CROSS-EXAMINATION:

Questions by the accused:

Q. ——— ——?

A. ——— ——.

(*If the accused declines to cross-examine the witness, the record should state:*)

The accused declined to cross-examine the witness.

RE-EXAMINATION:

Questions by the judge-advocate:

Q. ——— ——?

A. ——— ——.

EXAMINATION BY THE COURT:

Q. ——— ——?

A. ——— ——.

[OBJECTION TO QUESTION.][1]

Question by a member: ——?

To this question, the accused (or party objecting) objected as follows:

(*Insert objection.*)

To which the member replied:

(*Insert reply.*)

The accused and judge-advocate withdrew and the court was closed, and on being opened the president announced in their presence that the objection was sustained.

(*or*) was not sustained.

(*In the latter case the record should continue:*)

The question was then repeated by the judge-advocate.

A. ——— ——.

(*At the close of the examination of each witness, the record should state:*)

---

[1] If a question, put by a member, is objected to by another member, the judge-advocate, or the accused, and the objection is sustained, it will be *recorded as a question by a member*, and *not* answered; if the objection is not sustained, it will be *recorded as a question by the court*, repeated by the judge-advocate, and *must* be answered. If a question is objected to by anyone, at any time during the trial, the above method of recording the action of the court will be followed.

The testimony of the witness was read to him, and by him pronounced correct.

(*or*) corrected as follows:[1]

(*State corrections.*)

(*At the close of the prosecution, the record should continue:*)

The judge-advocate announced that the prosecution here rested.

(*If the court adjourns to meet the following day, the record should continue:*)

The court then, at —— o'clock — m., adjourned to meet at —— o'clock — m., to-morrow.

C—— D——,
1st Lieut. —— ——,
Judge-Advocate.[2]

FORT —— ——,
—— ——, 18—.

The court met, pursuant to adjournment, at —— o'clock, — m.

PRESENT.[3]

All the members of the court and the judge-advocate.

The accused, his counsel, and the reporter were also present.

The proceedings of —— were read[4] and approved.

(*or*) corrected as follows:

---

[1] If a witness desires to make corrections after hearing his testimony read, his statement in explanation will be recorded. Changes in the testimony as originally given will not be permitted. For the sake of brevity, if a number of witnesses are examined and no corrections are found necessary, a single remark, at the close of the examination of witnesses, that the testimony of each witness was read to him and by him pronounced correct, will be sufficient.

[2] The judge-advocate will sign each day's proceedings. (Par. 954, A. R.)

[3] See page 120, note 2, *supra*.

[4] The reading of the record of the preceding day may be dispensed with, but this should not be done without some strong reason, of which the court will judge. The accused should be present at the reading. See page 65, note 1, *supra*.

(*In latter case, enumerate corrections, giving page and line on which they occur.*)

Corporal John Smith, Co. ——, —— Infantry, a witness for the defense, was duly sworn and testified as follows:

DIRECT EXAMINATION:

Question by the judge-advocate: Do you know the accused? If so, state who he is.

A. —— ——.

Questions by the accused:

Q. —— ——?

A. —— ——.

(*The examination should be conducted as in case of a witness for the prosecution, the judge-advocate cross-examining, and the accused, if he so desires, re-examining the witness.*)

(*Should the accused wish to testify in his own behalf, the record will continue:*)

The accused, at his own request, was duly sworn as a witness, and testified as follows:

Q. —— ——?

A. —— ——.

(*The examination of the accused should be conducted in the same manner as that of any other witness.*)

(*If the accused has no other witness to call, the record should continue:*)

The accused had no further testimony to offer and no statement to make.

(*or*) having no further testimony to offer, made the following verbal statement in his defense.

(*or*) having no further testimony to offer, submitted a

[1] Though this is a witness for the defense, the judge-advocate will ask the preliminary question for the purpose of determining his identification of the accused.

written statement in his defense, which was read to the court, and is hereto appended and marked A.[1]

(*or*) requested until —— o'clock — m. to prepare his defense.

(*If the court takes a recess during the time asked for, the record will continue:*)

The court then took a recess until — o'clock —. m.; at which hour the members of the court, the judge-advocate, the accused, his counsel, and the reporter resumed their seats.

(*Or, if the court has other business before it, the record may continue:*)

The court then proceeded to other business and at —— o'clock —. m. resumed the trial of this case; at which hour, etc.

The accused submitted his defense, which was read to the court, and is hereto appended and marked B.[2]

The judge-advocate submitted the case without remark. (*or*) replied as follows:[3]

(*Insert reply.*)

(*or*) submitted and read to the court a written reply, which is hereto appended and marked C.

The accused and judge-advocate then withdrew and the

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[1] All documents and papers made part of the proceedings, or copies of them, will be appended to the record, in the order of their introduction, after the space left for the remarks of the reviewing authority, and marked in such a manner as to afford easy reference. It is not necessary to encumber a record by spreading upon it documents or other writings, or matter excluded by the court. The record should simply specify the character of the writings and the grounds upon which they were ruled out.

[2] The statement of the accused, or argument in his defense, and all pleas in bar of trial or in abatement, when in writing, should be signed by the accused, referred to in the proceedings as having been submitted by him, and appended to the record, whether he is defended by counsel or not.

[3] The judge-advocate is entitled by usage to sum up the case and present an argument at the conclusion of the trial, even though the accused declines to make argument or statement.

court was closed, and finds the accused, Private —— ——, Battery ——, —— U. S. Artillery:

Of the 1st specification, 1st charge: "Guilty;" (*or*) "Not guilty."

Of the 2d specification, 1st charge: "Guilty, except the words '—— ——,' and of the excepted words Not guilty."

Of the first charge: "Guilty;" (*or*) "Not guilty;" (*or*) "Not guilty, but guilty of, etc., —— ——."

Of the 1st specification, 2d charge, etc.

[PREVIOUS CONVICTIONS WHEN ACCUSED IS FOUND GUILTY.]

(*If the offense is of such character as to admit of evidence of previous convictions,*[1] *and the accused is found guilty, the record should continue:*)

The judge-advocate and accused were then recalled and the court opened; the judge-advocate then stated that he had no evidence of previous convictions to submit.

(*or*) the judge-advocate then read the evidence of previous convictions [2] hereto appended and marked D, E., etc.

(*If the accused has any statement to make in regard to his previous convictions, it will be recorded.*)

The accused and judge-advocate then withdrew and the court was closed, and sentences him, Private —— ——, Battery ——, —— U. S. Artillery, ————.

[NO PREVIOUS CONVICTIONS, OR ACCUSED ACQUITTED.]

(*If the offense is not of such character as to admit of evidence of previous convictions, or if the accused is acquitted, the record, after the findings are stated, should continue:*)

And the court does therefore sentence him, etc.

(*or*) does therefore acquit him, Private —— ——, Battery ——, —— U. S. Artillery.

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[1] See page 59, section 1, *supra*.

[2] See "Previous convictions," page 49, *supra*. When the proof produced is the copy furnished to the company or other commander, in accordance with par. 832, A. R., it will be returned to him and a copy of it attached to the record of the general, regimental, or garrison court trying the case. (Par. 929, A. R.)

The judge-advocate was then recalled and the court at —— —. m. proceeded to other business.
(*or*) adjourned until —— —. m., the —— inst.
(*or*) adjourned to meet at the call of the president.[1]
(*or, on completion of the trial of the last case before the court*), adjourned *sine die*.

A—— B——,
Major ——,
President.

C—— D——,
1st Lieut. ——,
Judge-Advocate.

(*At least two blank pages will be left after the adjournment for the decision and orders of the reviewing authority.*)

(*The papers forming the complete record will be fastened together at the top, and the record folded in four folds, and briefed on the first fold as follows:*)[2]

——— ———,
Private, Co. ——, ——.

———

Trial by general court-martial
at ——— ——— ——;
commencing ———, 18—;
ending ———, 18—.
President:
Major —— ——,
—— ——.
Judge-Advocate:
1st Lieut. —— ——,
—— ——.

[1] The hour of adjournment will be stated, unless the court is authorized to sit without regard to hours.

[2] When the record is completed, the judge-advocate will forward it without delay to the convening authority. (Par. 955, A. R.) See also page 67, par. 3, and page 73, par. 1, *supra*.

SEC. II.—FORM FOR REVISION OF RECORD.[1]

FORT —— ——,
—— ——, 18—.

The court reconvened at —— o'clock —. m., pursuant to the following order:

(*Insert copy of order.*)

(*or*) pursuant to the following indorsement:

(*Insert copy of indorsement.*)

PRESENT.[2]

—— ——.

ABSENT.

(*Insert names of absentees, and state cause of absence, if known.*)

The judge-advocate read to the court the foregoing order.

(*or*) the foregoing indorsement of the convening authority.

The judge-advocate then withdrew, and the court was closed and revokes its former findings, and finds the accused, etc.

(*or*) revokes its former sentence, and sentences the accused, etc.

(*or*) respectfully adheres to its former findings and sentence.

(*or*) amends the record by, etc.[3]

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[1] See "Revision of record," page 66, *supra*.

[2] If the findings and sentence are to be considered, all the members who voted on them should, if possible, be present. At least five members of the court, who acted upon the trial, must, and the judge-advocate should, be present at a revision; but it is in general neither necessary nor desirable that the accused should be present.

[3] See page 66, par. 2, *supra*.

The judge-advocate was then recalled and the court at —— —. m., etc.

A—— B——,
Major ——,
President.

C—— D——,
1st Lieut. ——,
Judge-Advocate.

(*The record of revision will be appended to the original proceedings and the whole indorsed and forwarded as before.*)

RECORD OF A SUMMARY COURT.

SEC. I.—FORM FOR RECORD.

Record of summary court at ——, ——.

Number.	Name, rank, company, and regiment.	Article of War violated.	Synopsis of specification.	Finding.	Number of previous convictions.	Sentence, with signature of trial officer	Action of commanding officer, with date and signature.

[1] Blank forms for summary court record and for monthly report of cases tried (for form, see page 132, *infra*) will be furnished by the Adjutant-General of the Army. The new form for the copy of summary court record, to be used as evidence of previous convictions, is intended for the purpose of reducing this evidence to the smallest possible space and bulk. The blanks are not intended for only one case each, but for as many cases as there is room for on the blank. The margin at the left of the blank is intended for binding with the court-martial record. For instructions regarding evidence of previous convictions by summary court, see page 49, par. 2, and page 78, par. 13, *supra*.

SEC. II.—REMARKS ON RECORD.

1. The synopsis of specification will be as brief as is consistent with showing, in connection with the Article of War violated, the nature of the offense and the date of its commission. For example, under the 32d Article of War, the synopsis may be, "From 1 a. m. to 10 p. m., October 10, 1892;" under the 33d Article, "Absent from reveille roll call, October 10, 1892;" and under the 38th Article, "At drill, October 10, 1892." So under the 62d Article it may be, "Drunk in quarters, October 10, 1892;" "Absent from fatigue, October 10, 1892;" "Absent from duty as company cook, October 10, 1892," etc.

The sentence will, when practicable, be recorded in brief, as for example: "Forfeiture of $10 and ten days' confinement at hard labor."

2. "When a post commander sits as a summary court, no approval of the sentence is required by law, but he should sign the sentence as post commander and date his signature." [1]

3. The name of the post will not be given under the head of "Action of commanding officer, with date and signature," as this information appears at the head of each page of the record.

MONTHLY REPORT OF SUMMARY COURT CASES.

Report of cases tried by summary court at —— ——, for the month of ——, 189—.

Number.	Name, rank, company, and regiment.	Article of War violated.	Synopsis of specification.	Finding.	Number of previous convictions.	Sentence. (If mitigated, give sentence as mitigated only. Signature of trial officer not to be copied.)

[1] Par. 933, A. R.

RECORD OF A FIELD OFFICER'S COURT.[1]

Record of a field officer's court appointed by the following order:

HDQRS. CAMP ——, ——,
—— ——, 189—.

SPECIAL ORDERS, }
No. ——. }

Major ——, —— Infantry, is appointed field officer's court for the —— Infantry.

By order of Brig. Gen. —— ——,
——, ——.
Asst. Adjt. Genl.

CAMP ——, ——,
—— ——, 189—.

Cases tried.[2]

Number of case.	Name, rank, company, and regiment.	Article of War violated.	Synopsis of specification.	Finding.	Number of previous convictions.	Sentence, with signature of court.	Action of brigade commander,[3] with date and signature.

[1] See page 80, *supra*.

[2] The record of each day's proceedings will be forwarded without delay to the authority appointing the court for his action and orders.

[3] If court is appointed by the commanding officer of the post or camp, order and form will be altered accordingly. See page 80, par. 2, *supra*.

RECORD OF A GARRISON COURT-MARTIAL.[1]

SEC. I.—FORM FOR RECORD.

CASE——.

Proceedings of a garrison court-martial convened at ——, pursuant to the following order:

FORT —— ——,
—— ——, 18—.

ORDERS, }
No. ——. }

A garrison court-martial will convene at this post at —— o'clock a. m., on —— ——, 18—, or as soon thereafter as practicable, for the trial of Private —— ——, Company ——, —— Infantry, he having objected to trial by summary court.

(*or*) the post (or other) commander being the accuser and the only officer present with the command.[2]

DETAIL FOR THE COURT.

Captain —— ——.
1st Lieutenant —— ——.
2d Lieutenant —— ——.
2d Lieutenant —— ——, judge-advocate.

By order of —— ——.
(Signed) —— ——,
1st Lieutenant ——,
Post Adjutant.

FORT —— ——,
—— ——, 18—

The court met, pursuant to the foregoing order, at —— o'clock —. m.[3]

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[1] The form of record for a garrison court-martial differs from that for a general court-martial only in respect to the form of the order appointing the court. The form here given is that for a case in which a plea of "Guilty" is entered; if the prisoner pleads "Not guilty," or makes a special plea, the form for record of a general court will be followed.

[2] See page 81, par. 3, *supra*.

[3] If the order contains the sentence, "The court may sit without regard to hours," the hours of meeting and adjournment need not be recorded.

PRESENT.

Captain —— ——.
1st Lieutenant —— ——.
2d Lieutenant —— ——.
2d Lieutenant —— ——, judge-advocate.

The court then proceeded to the trial of Private —— ——, Company ——, —— Infantry, who was brought before the court, and having heard the order convening it read, was asked if he had any objection to being tried by any member named therein; to which he replied in the negative.

The members of the court and the judge-advocate were then duly sworn, and the accused was arraigned upon the following charge and specification:

Charge: —— ——.

Specification: —— ——.

To which the prisoner pleaded:

To the specification—"Guilty."

To the charge—"Guilty."

The judge-advocate announced that the prosecution here rested.

The prisoner stated that he had no testimony to offer or statement to make.

The accused and judge-advocate then withdrew, and the court was closed and finds the accused, Private —— ——, Company ——, —— Infantry.

Of the specification—"Guilty."

Of the charge—"Guilty."

The judge-advocate and the accused were then recalled and the court opened; the judge-advocate stated that he had no evidence of previous convictions to submit.

(*or*) read the evidence of previous convictions hereto appended and marked A, B, etc.

The accused and judge-advocate then withdrew, and the court was closed and sentences him, Private —— ——, Company ——, —— Infantry, etc.

The judge-advocate was then recalled and the court at —— —. m., etc.

A —— B ——,
Captain ——,
President.

C—— D——,
2d Lieut. ——,
Judge-Advocate.

(*A sine die adjournment will be added to the last case before the court, and the record of each case folded and indorsed in the same manner as that for a general court-martial*.)

SEC. II.—REMARKS ON THE RECORD.

1. The decision and orders of the post commander, properly dated and over his official signature, will follow immediately after the sentence, *adjournment*, or other final proceeding of the court in the case.

2. "The complete proceedings of a garrison or regimental court will be transmitted without delay by the post or regimental commander to department headquarters."[1]

RECORD OF A REGIMENTAL COURT-MARTIAL.[2]

CASE ——.

Proceedings of a regimental court-martial convened at —— ——, pursuant to the following order:

FORT ——, ——,
——, ——, 189—.

ORDERS, }
No. ——. }

A regimental court-martial will convene at this post at —— o'clock a. m., on ——, ——, 189—, or as soon thereafter as practicable, for the trial of Private —— ——, Company ——, —— Infantry, he having objected to trial by summary court.

(*or*) the post (or other) commander being the accuser and the only officer present with the company.[3]

---

[1] Par. 956, A. R.

[2] The form of record for a regimental court differs from that for a garrison or a general court only in respect to the order convening the court.

[3] See page 82, par. 3, *supra*.

DETAIL FOR THE COURT.[1]

(*Complete record as in case of a garrison or general court.*)

FORMS FOR SENTENCES.

Form 1. *Reduction:* * * * "to be reduced to the ranks."[2]

Form 2. *Confinement:* * * * * "to be confined at hard labor, under charge of the post guard, for —— (—) days."

Form 3. *Forfeiture:* * * * "to forfeit —— (—) dollars of his pay."[3]

Form 4. *Confinement and forfeiture:* * * * "to be confined at hard labor, under charge of the post guard, for —— (—) months, and to forfeit —— (—) dollars per month for the same period."

Form 5. *Dishonorable discharge and forfeiture of pay and allowances:* * * * "to be dishonorably discharged the service of the United States, forfeiting all pay and allowances due him."[4]

Form 6. *Dishonorable discharge, forfeiture of pay and allowances, and confinement:* * * * "to be dishonorably discharged the service of the United States, forfeiting all pay and allowances due him, and to be confined at

---

[1] See page 82; also page 89, note 1, *supra*.

[2] See pages 60 and 63, and page 78, par. 15, *supra*.

[3] *Detention* of pay is no longer authorized, and the act of June 16, 1890, providing for *retention* of $4 per month of a soldier's pay during first year of enlistment was repealed February 12, 1895.

[4] The clause "or to become due," so frequently added after "allowance due," in such sentences is superfluous, for the reason that the forfeiture takes effect on the date of the order promulgating the sentence.

hard labor at such post (*or* in such penitentiary) as the reviewing authority may direct, for —— (—) years."

If the period of confinement is less than one year, such a sentence should read: * * * "at hard labor, under charge of the post guard, for —— (—) months."

SUMMONS FOR A MILITARY WITNESS.

FORT —— ——,
—— ——, 18—.

To —— ——,
—— *Infantry.*

SIR: You are hereby summoned to appear on the —— of —— 18—, at —— o'clock —. m., before a general court-martial, convened at —— ——, by Special Orders, No. ——, from ——, as a witness in the case of Private A—— B——, Co. ——, —— Infantry.

C—— D——,
—— ——,
Judge-Advocate.

SUBPŒNA FOR CIVILIAN WITNESS.

UNITED STATES } *Subpœna.*
vs. }
—— ——.

The President of the United States, to —— ——, *greeting:*

You are hereby summoned and required to be and appear in person on the —— day of ——, 18—, at —— o'clock —. m., before a general court-martial of the United States, convened at —— ——, by Special Orders, No. ——, Headquarters —— ——, dated —— ——, 18—, then and there to testify and give evidence as a witness for the —— in the above-named case. And have you then and there this precept.

Dated at ——, this —— day of ——, 18—.

—— ——,
Judge-Advocate of the Court-Martial.

SUBPŒNA DUCES TECUM.

(*Civilian witness.*)

UNITED STATES
vs.
—— ——
} *Subpœna.*

The President of the United States, to —— ——, *greeting:*

You are hereby summoned and required to be and appear in person on the ——day of ——, 18—, at —— o'clock —. m., before a general court-martial of the United States, convened at —— —— by Special Orders, No. ——, Headquarters —— ——, dated ——, 18—, then and there to testify and give evidence as a witness for the —— in the above-named case; and you are hereby required to bring with you, to be used in evidence in said case, the following-described documents, to wit: —— ——. And have you then and there this precept.

Dated at ——, this —— day of ——, 18—.

—— ——,
Judge-Advocate of the Court-Martial.

RETURN OF SERVICE.

(*Indorsement of preceding writs.*)[1]

UNITED STATES
vs.
—— ——.

—— ——, 18—.

I certify that I made the service of the within subpœna on —— ——, the witness named therein, by personally delivering to him in person a duplicate of the same at ——, on the —— day of ——, 18—.

—— ——.

—— ——,
—— ——. } *ss.*

—— ——, being duly sworn, on his oath states that the foregoing certificate is true.

—— ——.

[1] On the back of each form of writ are forms for both certificate and affidavit. It is not necessary to make the affidavit unless the witness be in default and it is proposed to issue process to compel attendance. In such case the affidavit can be filled out from the certificate made at the time of service.

Subscribed and sworn to this —— day of ——, 18—, before me.[1]

—— ——.

WARRANT OF ATTACHMENT.

UNITED STATES
vs.
—— ——.

The President of the United States, to —— ——, *greeting:*

WHEREAS —— ——, of —— ——, was on the —— day of ——, 18—, at ——, duly subpœnaed to appear and attend at ——, ——, on the —— day of ——, at —— o'clock — m., before a general court-martial duly convened by Special Orders, No. ——, dated Headquarters Department of ——, —— —— 18—, to testify on the part of the —— in the above entitled case; and whereas he has failed to appear and attend before said general court-martial to testify as by said subpœna required, and whereas he is a necessary and material witness in behalf of the —— in the above-entitled case;

Now, therefore, by virtue of the power vested in me, the undersigned, as judge-advocate of said general court-martial, by section 1202 of the Revised Statutes of the United States, you are hereby commanded and empowered to apprehend and attach the said —— ——, wherever he may be found within the —— of ——,[2] and forthwith bring him before the said general court-martial assembled at —— ——, to testify as required by said subpœna.

—— ——,
—— ——,
Judge-Advocate of said General Court-Martial.

Dated —— ——,
—— ——, 18—.

[1] After service, as above indicated, the original subpœna should be at once returned to the judge-advocate of the court; if the witness can not be found, the judge-advocate should be so informed. If a civilian witness be summoned from a distance, pars. 6 and 7, page 144, *infra*, will be copied on back of subpœna, to enable witness to keep a proper memorandum of expenses.

[2] State, Territory, or District where the court sits.

INTERROGATORIES AND DEPOSITION.

INTERROGATORIES.

THE UNITED STATES } To ——. (*Name of officer who is to*
vs. } *cause the deposition to be taken.*)
—— ——

Interrogatories and cross-interrogatories to be propounded under the 91st Article of War to —— ——, a witness for the —— (*prosecution or defense*) in the above-entitled case, now pending and to be tried before the general court-martial, convened at —— ——, by paragraph ——, Special Orders, No. ——, Headquarters Department of ——, dated —— ——, 189—.

1st interrogatory: —— ——?

2d interrogatory: —— ——?

Etc.

1st cross-interrogatory: —— ——?

2d cross-interrogatory: —— ——?

Etc.

—— ——.[1]

—— ——.

DEPOSITION.

—— ——, the witness above named, being first duly sworn, doth depose and say for full answers to the foregoing interrogatories, as follows:

To the 1st interrogatory: —— ——.

To the 2d interrogatory: —— ——.

Etc.

—— ——.

(*Signature of witness.*)

Subscribed and sworn to before me this —— day of ——, 189—.

—— ——,[2]

—— ——.

[1] To be signed by the parties or party propounding the interrogatories and cross-interrogatories. If the witness is for the prosecution and there are no cross-interrogatories, the judge-advocate will certify that the defense had an opportunity to propound them. (See 91st A. W.) With the consent of the opposite party the deposition of a witness residing *within* the State, Territory or District in which the court sits may be taken and read in evidence. A simple consent entered on this form will be sufficient.

[2] The jurat to be signed by the officer administering the oath, who will add his official designation. (See page 36, par. 3, *supra*.) If the oath is administered by a notary public, his seal will be affixed to the deposition.

——— ———, 18—.

I, ——— ———, the officer designated to cause the deposition of the said ——— ——— to be taken on the foregoing interrogatories and cross-interrogatories, do certify that it was duly made and taken under oath.

——— ———,

———.

ACCOUNT OF CIVILIAN WITNESS.

The United States to ——— ———, *Dr.*

189—.	Expenses as witness before a military court convened under annexed order.	Dolls.	Cts.
For civilian witness NOT IN Government employ.	From ——— ———, 189—, to ——— ———, 189—.....		
	For mileage from ——— ——— to ——— ——— and return, being ——— miles, at 5 cents per mile.....		
	For allowance while traveling to and from said court, between the above dates, inclusive, ——— days, at $1.50 per day.....		
	For allowance while in attendance on said court, from ——— ———, 189—, to ——— ———, 189—, as per judge-advocate's certificate hereon, ——— days, at $1.50 per day.....		
	Total.....		
For civilian witness IN Government employ.	From ——— ———, 189—, to ——— ———, 189—.....		
	For actual cost of travel from ——— ——— to ——— ——— and return, as per memorandum annexed.....		
	For actual cost of meals and rooms while traveling to and from said court, between above dates, inclusive, ——— days.....		
	For actual cost of meals and rooms while in attendance on said court, from ———, 189—, to ——— ———, 189—, as per judge-advocate's certificate hereon, ——— days....		
	Total.....		

I solemnly swear that the above account is correct; that I have not been furnished with Government transportation for any part of the journey for which travel fare is charged, and that the journey was performed without unnecessary or avoidable delay.

——— ———, *Witness.*

Sworn to and subscribed before me at —— —— on this —— day of ——, 189—.

—— ——,
——,
Judge-Advocate.

Received this —— day of ——, 189—, of Major —— ——, paymaster, U. S. Army, —— dollars, in full of the above account, by check No. ——, on ——.

—— ——, *Witness.*

[In duplicate.]

JUDGE-ADVOCATE'S CERTIFICATE.

(*On back of form.*)

I certify that —— ——, a civilian, has been in attendance as a material witness from —— ——, 189—, to —— ——, 189—, inclusive, before a general court-martial duly convened at this place, and that he was duly summoned thereto from —— ——.

—— ——,
——,
Judge-Advocate

Place, —— ——.
Date, —— ——, 189—.

(NOTE.—*If the witness be "in Government employ," these words will be inserted in the above certificate after the word "civilian."*)

RULES GOVERNING ACCOUNTS OF CIVILIAN WITNESSES.

The Paymaster-General is, under paragraphs 962–966, Army Regulations, governed by the following rules in the treatment of vouchers for travel expenses of civilian witnesses before military courts:

1. The voucher must be accompanied by a copy of the order convening the court, with the original summons in the case, or, if the attendance was authorized by military order, by the original order. In the absence of the original order or summons, certified copies of the same will be accepted.

2. The affidavit of the witness (on face of voucher) and the judge-advocate's certificate (on back of voucher) are required in all cases. The voucher and all accompanying papers must be in duplicate.

3. The items of expenditure authorized in paragraphs 962 and 963, Army Regulations, will be set forth in detail in a memorandum which will be attached to each voucher. No other items will be allowed. The correctness of the items will be attested by the affidavit of the witness, to be made, when practicable, before the judge-advocate.

4. The certificate of the judge-advocate will be evidence of the fact and period of attendance, and will be made on the voucher.

5. Upon execution of the affidavit and certificate the witness will be paid upon his discharge from attendance, without waiting for completion of return travel. The charges for return journeys will be made upon the basis of the actual charges allowed for travel to the court.

6. A civilian witness *not in* Government employ will receive 5 cents a mile for going from his place of residence to the place of trial or hearing and 5 cents a mile for returning, distances to be calculated by the shortest usually traveled route. He will also receive $1.50 for each day actually and unavoidably consumed in attendance upon the court under the summons. No other items will be allowed.

7. Civilian witnesses *in* Government employ will receive as follows:

(*a*) Amount actually paid for cost of transportation or travel fare.

(*b*) Amount actually paid for cost of transfers to and from railway stations, not exceeding 50 cents for each transfer.

(*c*) Amount actually paid for cost of one double berth in sleeping cars or on steamers where an extra charge is made therefor.

(*d*) The *actual cost* of meals and rooms at a rate *not exceeding* $3 per day for each day actually and unavoidably consumed in travel or in attendance upon the court.

8. Travel must be estimated by the shortest available usually traveled route; the charge for cost of travel (items *a*, *b*, *c*) by established lines of railroad, stage, or steamer should not exceed the usual rates in like cases, the time occupied to be determined by the official schedules, reasonable allowance being made for customary unavoidable detention.

9. The summons, or order for attendance, will be presumed to show in all cases, by indorsement or otherwise, if transportation in kind or commutation of rations has been furnished. Transportation in kind will, for any distance covered thereby, be a bar to payment of item *a*. Indorsements of transportation furnished will be scrutinized to ascertain if any part of item *c* has been included.

Commutation of rations will be a bar to payment of item *d*.

Transportation and commutation of rations will be a bar to any payment.

10. No per diem allowance can be made where the attendance upon the court does not require the witness to leave his station. (This applies to civilians *in* Government employ.)

11. Compensation to civilians in or out of Government employ, for attendance upon *civil courts*, is payable only by the civil authorities.

12. If a witness is *in* Government employ the judge-advocate will state the fact. If it does not appear in the certificate or elsewhere in the papers, and is not known to the paymaster, it will be assumed that the witness is *not in* Government employ.

13. Whenever needed, judge-advocates can procure blank accounts for civilian witnesses from any army paymaster or from the Paymaster-General's Office. The accounts may then be made out upon a witness' discharge from attendance. If no paymaster be present at the place where the court sits, the accounts, authenticated as above directed, may be transmitted to any paymaster for payment, with confidence that the witness will receive his pay without unnecessary delay.

FORM FOR SPECIAL ORDERS.

HEADQUARTERS DEPARTMENT OF ——,
——, ——, 18—.

SPECIAL ORDERS }
No. —— }

* * * * * * *

3. Recruit —— ——, General Service, U. S. Army, having been tried by a general court-martial convened at —— ——, and found guilty of fraudulent enlistment, in violation of the 62d Article of War, was sentenced "to be dishonorably discharged the service of the United States, forfeiting all pay and allowances due him, and to be confined at hard labor at such post as the reviewing authority may direct, for the period of one (1) year."

The sentence is approved and will be duly executed. The prisoner will be ——.

* * * * * * *

By command of Brig. Gen. —— ——.

—— ——,
Assistant Adjutant-General.

HABEAS CORPUS BY STATE COURT.

RETURN TO WRIT.

FORM 1.—*Person held under warrant of attachment.*

In re —— ——. (*Name of party held.*)—Writ of habeas corpus—return of respondent.

To the ——.[1]

The respondent, Major —— ——, —— U. S. Infantry, upon whom has been served a writ of *habeas corpus* for the production of —— ——, respectfully makes return and states that he holds the said —— —— by authority of the United States, pursuant to a warrant of attach-

[1] "Court" or "judge," as the case may be.

ment issued under section 1202 of the Revised Statutes of the United States by a judge-advocate of a lawfully convened general court-martial and duly directed to him, the said respondent, for execution; that he is diligently and in good faith engaged in executing said warrant of attachment, and that he respectfully submits the same for the inspection of the court, together with the original subpœna and proof of service of the same, and a certified copy of the order convening said general court-martial.

And said respondent further respectfully makes return that he has not produced the body of the said —— ——, because he holds him by authority of the United States, as above set forth, and that —— ——[1] is without jurisdiction in the premises, and he respectfully refers to the decisions of the Supreme Court of the United States in Ableman *vs.* Booth, 21 Howard 506, and Tarble's Case, 13 Wallace, 397, as authority for his action, and prays —— ——[1] to dismiss the writ.

—— ——,
Major, —— *U. S. Infantry.*

Dated —— ——,
—— ——, 18—.

FORM 2.—*Person held as a deserter.*

—— —— respectfully makes return and states that he holds the said —— —— by authority of the United States, as a deserter from the U. S. Army, under circumstances as follows:

That the said —— —— was duly enlisted as a soldier in the service of the United States at —— ——, on —— ——, 189—, for a term of —— years.

That the said —— ——, deserted said service at ——, on —— ——, 189—, and remained absent in desertion until he was apprehended at —— ——, on —— ——, 189—, by —— ——, and was thereupon committed to the custody of the respondent as commanding officer of the post of —— ——.

[1] "This court" or "your honor," as the case may be.

That charges for said desertion, a copy of which is annexed, have been preferred against the said —— ——, and that he will be brought to trial thereon as soon as practicable before a court-martial to be convened by the commanding general of the department of ——.

(*or*) convened by Special Orders No. ——, dated Headquarters Department of ——, 189—, a copy of which order is hereto annexed.

And the said respondent further makes return, etc.

(*Conclude with last paragraph of form 1.*)

HABEAS CORPUS BY UNITED STATES COURT.

RETURN TO WRIT.

(*Make return as in case of writ by a State court, except as to last paragraph, for which substitute as follows:*)

In obedience, however, to the said writ of *habeas corpus* the respondent herewith produces before the court the body of the said —— ——, but for the reasons set forth prays this honorable court to dismiss the said writ.

—— ——,

Major —— U. S. Infantry.

Dated ——, ——,

—— ——, 189—.

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